

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA

v.

CHIKOSI LEGINS

Criminal Case No.:
3:19 CR 104

February 10, 2020
VOLUME III

TRANSCRIPT OF OPENING STATEMENTS, ALL TESTIMONY, AND
CLOSING STATEMENTS OF JURY TRIAL PROCEEDINGS
BEFORE THE HONORABLE DAVID J. NOVAK
UNITED STATES DISTRICT COURT JUDGE

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UNITED STATES DISTRICT COURT

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(The proceeding reconvened at 9:24 a.m.)

THE CLERK: Criminal matter 3:19 CR 104,
United States of America v. Chikosi Legins. Mr. Charles
A. Gavin representing the defendant. Mr. Thomas A.
Garnett and Kathryn E. Gilbert representing the
government.

Counsel, are we ready to proceed?

MR. GARNETT: United States is ready,
Your Honor.

MR. GAVIN: Defense is ready, Your Honor.

THE COURT: All right. We are going to start
off with a couple of preliminary issues.

Mr. Gavin, I need to address Ms. Legins. I
think she's behind you.

Ms. Legins, do you want to rise? Do you want to
come on up to the lectern?

Ms. Legins, it has come to my attention that
while the trial has been going on, you have been making
facial expressions or sighing or making noises or other
things that are expressing your displeasure about what's
going on with the testimony. I just want to tell you,
look, I understand this is a difficult time for you. I
know you love your son, but you can't do that. I need you
to be like a sphinx. Sit there. Take it in. The jury
will do what's right at the end of the day. Let them do

1 their job. I'll do my job, and you need to do your job.

2 MS. LEGINS: Okay.

3 THE COURT: Because if you do it again, I'm
4 going to have to kick you out of the courtroom. I don't
5 want to do that. I know you don't want to do that. And I
6 know this is hard for you, but you've got to knock it off.

7 MS. LEGINS: Uh-huh.

8 THE COURT: Okay? All right. Why don't you
9 have a seat. Okay?

10 All right. The other issue I want to address,
11 before we get to the substantive issue, is it's come to my
12 attention that the first alternate who -- a young lady
13 indicated that she lived in Emporia, but it turns out she
14 actually -- that's her mother's address. She's actually
15 been living in Virginia Beach.

16 Now, it's not affecting her commute because
17 we've put her in a hotel during this time period, and the
18 fact is that even though it's out of our division, it's
19 still within our district. So I believe that she is still
20 within our jurisdiction to sit as a juror. I don't think
21 there's an issue, but I wanted to let you all know. And
22 if you think there's an issue, tell me now.

23 MR. GARNETT: Thank you, Your Honor. We have no
24 issue with that.

25 THE COURT: All right.

1 MR. GAVIN: No objection, Your Honor.

2 THE COURT: All right. So the last thing I
3 wanted to address is this. Is the government still going
4 to put on the Rule 413 evidence?

5 MR. GARNETT: Judge, we are -- they are
6 obviously here. They're prepared to testify. That's a
7 decision we haven't made yet in terms of absolutely
8 whether we're going to or not.

9 THE COURT: So I would encourage you not to do
10 that. I mean, I've already ruled to allow you to do that,
11 but I think you ought to think about that. It seems to me
12 that the crux of what's going on is you've got a
13 surveillance video of the defendant and the inmate, and
14 you have -- I gather DNA evidence is coming. Is that --

15 MR. GARNETT: That's correct, Your Honor.

16 THE COURT: All right. To me, you're creating
17 an appellate issue when you don't need to do that, but
18 I'll leave it up to you.

19 But if you're going do that, I want you to give
20 me some notice, and I think what I should do is give an
21 instruction to the jury before we hear from those
22 witnesses.

23 Do you agree with that, Mr. Gavin?

24 MR. GAVIN: Yes, sir.

25 THE COURT: Because that's significant evidence.

1 We have given you a model jury instruction from the Eighth
2 Circuit that I would give the relevant parts of that when
3 we get to that point. What do you say we answer by
4 lunchtime about whether or not you're going to go forward?
5 Does that -- will you have a better handle on what you're
6 doing then?

7 MR. GARNETT: Your Honor, I'd ask for -- if we
8 could at least have until the end of the day to see how
9 the rest of our evidence comes in, I think that would be
10 reasonable.

11 THE COURT: That's fine. You're not going to
12 put them in today, though?

13 MR. GARNETT: No, Your Honor. It wouldn't be
14 until Tuesday.

15 THE COURT: Well, that's fine. That's a fair
16 deal.

17 MR. GARNETT: Thank you, Your Honor.

18 THE COURT: You can even -- well, that's fine,
19 yeah. You tell me at the end of the day. I'll give you a
20 chance to huddle. What we'll do is we'll break at some
21 point. I'll give you a couple minutes. You and
22 Ms. Gilbert can chat about whether or not you want to do
23 that or not, and then you can report to me before we
24 adjourn for the night. Does that sound fair?

25 MR. GARNETT: That's fine, Your Honor.

1 THE COURT: All right. Is there anything else
2 you wanted to address before I bring the jury out?

3 MR. GARNETT: Judge, just for -- just very
4 briefly. Just so we don't put our foot wrong today. If
5 we could just -- I wanted to make sure we were --

6 THE COURT: So you don't what?

7 MR. GARNETT: Put our foot wrong, Judge.

8 THE COURT: Oh, we had enough of that.
9 Ms. Gilbert is not going to do that ever again.

10 MR. GARNETT: Yes, Your Honor. This would
11 probably --

12 THE COURT: She's really smart. She's learned
13 not to argue with me.

14 MR. GARNETT: She's smarter than I am,
15 Your Honor.

16 We just wanted to -- on the convictions, I was
17 jotting things down rapidly. But for Mr. Lemagne's
18 convictions, in terms of what defense counsel is allowed
19 to elaborate on, was it the length of time of the scheme?
20 If Your Honor could just go back over that so we know -- I
21 did not do as good a job of --

22 THE COURT: This is the identity fraud one,
23 right?

24 MR. GAVIN: It was the length of the time of the
25 scheme and the fact that there are multiple victims.

1 THE COURT: Yeah. All you can say is this crime
2 spanned approximately a year, and there were multiple
3 victims.

4 MR. GAVIN: Yes, sir.

5 THE COURT: The nature of the offense, the date
6 of the conviction. That's it.

7 MR. GARNETT: That's fine, Your Honor. I
8 just --

9 THE COURT: So I only added two things beyond
10 the stated rule. And the reason for that, just to be
11 clear, is the statement of facts, as I looked over it,
12 that subsumed some bad acts, I think, about falsehood.
13 And I just think dealing with it that way accomplishes
14 both what -- the conviction issue, but also the bad act
15 issue. It gives them a fair chance without creating any
16 issues.

17 Do you agree with that, Mr. Gavin?

18 MR. GAVIN: Yes, sir.

19 THE COURT: Do you understand what I'm doing?

20 MR. GARNETT: Yes, Your Honor. And my goal
21 really was just to clarify because I was not taking notes
22 as rapidly as I probably should have then.

23 THE COURT: Yeah, but this is her witness, isn't
24 it?

25 MR. GARNETT: Yes, Your Honor.

1 THE COURT: You're not supposed to be tag
2 teaming. She can speak for herself.

3 MR. GARNETT: We talk frequently, though,
4 Your Honor.

5 THE COURT: I found that out quite quickly. All
6 right.

7 MR. GARNETT: Thank you, Your Honor.

8 THE COURT: All right. Are we ready to go?
9 Hold on a second. Let's bring out Mr. Lemagne, put him in
10 the box.

11 All right. Do you want to bring the jury in?

12 All rise for the jury.

13 (The jury entered the courtroom.)

14 THE COURT: All right. Everybody can be seated.

15 Good morning, ladies and gentlemen. I hope you
16 got some rest and you're ready to work here this week.
17 We're hoping to get this case to you by Wednesday. I just
18 want to ask you again, has everybody heeded my
19 instructions about not talking to anybody else about the
20 case, not doing any Internet research or tweeting or
21 blogging or whatever else that stuff is called? Everybody
22 behave?

23 A JUROR: Yes.

24 A JUROR: Yes, sir.

25 THE COURT: Nobody has got anything to report to

Brandon Lemagne - Cross

11

1 me? All right. You're going to keep behaving?

2 A JUROR: Yes, sir.

3 THE COURT: All right. We're going to get the
4 show on the road.

5 Mr. Lemagne, I am going to remind you that you
6 continue to be under oath, the same oath that you took on
7 Friday. Do you understand that?

8 THE WITNESS: Yes, Your Honor.

9 THE COURT: All right.

10 Mr. Gavin, the witness is yours.

11 MR. GAVIN: Yes, sir. Thank you.

12 **CROSS-EXAMINATION**

13 BY MR. GAVIN:

14 Q Good morning, Mr. Lemagne.

15 A Good morning.

16 Q Mr. Lemagne, do you remember how many times you may
17 have met with the United States Attorney to prepare for
18 your testimony Friday?

19 A Not offhand, but we met several times, yes.

20 Q Was it more than five?

21 A I don't believe, but we did meet several times.

22 Q Did she prepare questions for you to answer?

23 A What do you mean?

24 Q Did she prepare written questions for you to review
25 prior to your answering them?

Brandon Lemagne - Cross

12

1 A She discussed with me some things that she would
2 probably ask me on the stand, yes.

3 Q I'd like to first look at your record. She went over
4 that with you, but I had a couple questions. So do you
5 agree that between 2007 and 2012, you had nine felony
6 convictions?

7 A That's probably right, yes.

8 Q And then another identity theft in 2013?

9 A Yes.

10 Q And then another felony conviction in 2017?

11 A Yes.

12 Q And then the conviction on which you are incarcerated
13 now; is that correct?

14 A Yes. Forgery, fraud conviction.

15 Q The conviction on which you're incarcerated now,
16 Mr. Lemagne, does that involve one specific date or does
17 it span a course of time?

18 A It spans the course over a couple of years.

19 Q So there was a period of fraud that's in -- that was
20 at least greater than a year?

21 A Yes.

22 Q And did that fraud include one victim or multiple
23 victims?

24 A It included multiple victims.

25 Q Do you know a gentleman by the name of Ajibola

Brandon Lemagne - Cross

13

1 Erogbobo?

2 THE COURT: I think you should spell that.

3 MR. GAVIN: I'm going to try. It's

4 I-M-A-J-A-L-E(sic). Last name E-R-O-G-B-O-G-B-U(sic).

5 A No, not offhand I don't.

6 BY MR. GAVIN:

7 Q Do you remember him being in the transgender

8 community at Petersburg Medium?

9 A Say his name again. I'm sorry.

10 Q We'll just call him Mr. Erogbogbo, Ajibola Erogbogbo.

11 A Erogbogbo.

12 Q Erogbogbo. Maybe -- maybe I have it wrong, and maybe
13 you have it right.

14 A I know exactly who you're talking about. No, he's
15 not a member of the transgender community.

16 Q He's not?

17 A Not that I'm aware of.

18 Q Was he a friend of yours?

19 A He was an inmate on the compound.

20 Q Would you be surprised to hear that he considered you
21 a best friend?

22 A That's nice. He's -- he's cool. We're -- I mean,
23 I'm definitely associated with him. He's an associate. I
24 wouldn't describe him as a friend.

25 Q Where did he work at the facility?

Brandon Lemagne - Cross

14

1 A I'm not sure offhand. I know he had a job at -- I
2 believe he worked in commissary. He was -- yeah, he was
3 working in commissary.

4 Q Did he ever work, to your knowledge, in the law
5 library?

6 A No.

7 Q Did he ever work, to your knowledge, in any library?

8 A No. I remember that he was employed at commissary.

9 Q Are you familiar with a search tool called
10 LexisNexis?

11 A I am.

12 Q How did you find out about LexisNexis?

13 A It's common knowledge within the FBOP. If you want
14 to review your cases, you use LexisNexis. If you want to
15 review other people's cases, you review -- I mean, that's
16 the only search engine that we have generally. So it's
17 common knowledge.

18 Q So using LexisNexis, you can then search existing
19 cases that have been ruled on online? Or not online.
20 Strike that. But through the website?

21 A Basically. I think that's the gist of it, yes.

22 Q And I should strike that again because it's not
23 really a website because that implies you went out on the
24 web. It's just a program that you can use to search these
25 things, correct?

Brandon Lemagne - Cross

15

1 A Yes.

2 Q And is it your testimony that you never asked
3 Mr. Erogbogbo for assistance in researching LexisNexis?

4 A I won't say that I've never asked him for assistance.
5 I've asked him how to do specific things. "A.J., how do
6 you" -- in something like that, yes.

7 Q So you called him A.J.?

8 A Yes.

9 Q All right. So where did you ask him those questions?

10 A In the library.

11 Q But you don't remember that he was employed in the
12 library?

13 A Being in the library doesn't mean that you're
14 employed there. It just means that you're there.

15 My understanding was he had a job in commissary.
16 If he was in the library -- and he did spend a lot of time
17 in the library -- it was never my knowledge that he was
18 working there. I don't know if that makes sense. There
19 were dozens of people in the library every day. It
20 doesn't mean that they have jobs there. Last I remember,
21 he was working in commissary.

22 Q All right. So this gentleman that you referred to as
23 A.J., did he ever assist you with a LexisNexis search?

24 A Yes, he did.

25 Q And what were you searching?

Brandon Lemagne - Cross

16

1 A Various things. I remember that he had looked up
2 things and showed me in reference to Medicare fraud or a
3 case that his mother was supposedly involved in.

4 Q Was this your request for a search on Medicare fraud
5 or was it his request for a search on Medicare fraud?

6 A I told him that I was interested in starting a
7 medical care business for senior citizens, and he had
8 indicated to me that it would probably be hard because I
9 had been involved in writing checks. And being as though
10 I had fraud charges, I wouldn't be able to do it.

11 He explained to me that his mother was -- had
12 worked with a lady previously who had started one of those
13 businesses and got in trouble in reference to fraud. And
14 that's the case that he pulled up and showed me.

15 Q Was it a criminal case?

16 A It was a criminal case, I believe.

17 Q So it would have been US or the state, or wherever it
18 was, against a person?

19 A I don't remember the specifics. I just remember that
20 the case involved Medicare fraud.

21 Q So how do you believe that researching a criminal
22 case that involves Medicare fraud would help you gain an
23 understanding of how the industry works?

24 A He pulled up a case that a lady that his mother knew
25 who ended up getting in trouble. He pulled up the case to

Brandon Lemagne - Cross

17

1 show me what he was talking about.

2 As far as how the industry worked, I had ordered
3 books and read about it, and I was interested in being
4 involved in the industry. He was just pulling up the case
5 I guess to illustrate exactly what he was talking about in
6 reference to how people get in trouble dealing with
7 Medicare and other things like that.

8 Q Was that the first search that you did?

9 A No.

10 Q Did you provide the search terms for Mr. A.J. or did
11 he provide them to you? In other words, did you tell him
12 what to type in as far as the search goes or did he type
13 in something on his own?

14 A He knew her name. He knew the district that that
15 lady's case was in. He knew this woman. She was an
16 African woman with a really unique name. There's no way
17 that I would have known how to spell that. He pulled the
18 case up.

19 Q My question to you, sir, is did you provide the
20 search term; for example, Medicare fraud?

21 A No, I did not. He knew the case. He knew the
22 district. He had read the case before.

23 Q When, approximately, if you can recall, did this
24 happen?

25 A I can't recall when it happened.

Brandon Lemagne - Cross

18

1 Q Can you relate it in time to the March 16, 2018,
2 incident?

3 A Months prior. Like probably the year before, months
4 prior.

5 Q Did you, at some point, do another search on another
6 day?

7 A Prior to that, A.J. would make it a habit of pulling
8 up other people's cases. We were on a stomp yard. So
9 that's kind of what he would do in the library is pull up
10 other people's cases to see if they had molested children
11 or had raped people or if they just had those types of
12 charges.

13 Q Did you ever tell A.J. that you wanted to explore and
14 investigate cases wherein an officer had been found guilty
15 or had been sued civilly in a case involving sexual abuse
16 between the officer and the inmate?

17 A No.

18 Q Ever remember looking at verdicts that may have
19 resulted in \$300,000 rewards -- or awards to the inmate
20 that was sexually molested?

21 A Quite honestly, I reviewed a lot of the cases like
22 that. Did A.J. assist in that review? No. Did I ask him
23 for assistance in that? No, because I was fairly familiar
24 with LexisNexis.

25 Q So what were you looking for? Were you looking for

Brandon Lemagne - Cross

19

1 the disposition amounts?

2 A No. I was -- I think I explained in my testimony
3 Friday that I was having an issue at Petersburg with the
4 whole laundry incident. So -- and to be honest with you,
5 I didn't really know where to go. I didn't feel like I
6 had an asset or an ally in this, and I felt like nobody
7 was listening to me. So, for me, yeah, I did look at
8 LexisNexis in reference to anything, in reference to that
9 type of abuse. Any type of correctional officer acting
10 out sexually with an inmate. I saw several cases where
11 awards were made, yes. I didn't see any cases that were
12 specific to mine.

13 Q But you were searching for awards in cases, not
14 necessarily procedure on a PREA violation?

15 A If you're searching a case, the disposition is
16 generally there. So I don't know what cases have awards
17 or what cases don't. If I pull up a case and there's been
18 a disposition on it, the award is going to be there. So,
19 no, I wasn't specifically searching for cases and awards.
20 I was, I guess, trying to find some guidance or figure out
21 what I needed to do in getting some relief from what I was
22 going through.

23 Q Have you ever had any harsh words or problems with
24 Mr. A.J.?

25 A Yeah.

Brandon Lemagne - Cross

20

1 Q Do you have any reason to think that he would lie
2 about what he would say if he were to testify against you?

3 A Yeah, I do.

4 Q What are they?

5 A He may be trying to get some relief for his sentence.
6 I mean, a lot of people make it a habit of that, jumping
7 on cases, getting involved in things that they don't know
8 anything about. It's prison. People have a lot of time,
9 and people are looking for a way out.

10 So if he thinks that he knows something or if he
11 thinks that he's familiar with something, why wouldn't he
12 get involved in it?

13 Q All right. But he doesn't have any personal animus
14 with you? You guys have never been in a fight, for
15 example?

16 A I mean, he's never put his hands on me. We've had
17 our disagreements.

18 Q Well, it sounds like you know him a whole lot better
19 than what you said in the beginning. How well do you know
20 him?

21 A I said that we are acquaintances. This is prison. I
22 don't get to choose who I'm around. Yeah, I know A.J.

23 Q Do you know Richard Fornash?

24 A No, I don't.

25 Q Do you remember a conversation that you and others

Brandon Lemagne - Cross

21

1 may have had around a softball diamond sometime prior to
2 the March 16, 2018, incident?

3 THE COURT: I didn't hear what you said.

4 Conversations others had --

5 MR. GAVIN: -- around the softball diamond.

6 THE COURT: Softball diamond.

7 BY MR. GAVIN:

8 Q Where you were talking about guards and conduct of
9 guards?

10 A I don't, no.

11 Q Do you ever remember having a conversation in which
12 you said that if you had the opportunity to sue a guard to
13 get money or to get time off your sentence, you'd do it in
14 a minute?

15 A I go home in April, and no, I don't remember that
16 conversation.

17 Q Okay. All right. I'm going to move forward to the
18 first incident that you said that Mr. Legins exposed
19 himself to you. Did you tell officer -- or Special Agent
20 Lavender that that was February 17th when Mr. Legins saw
21 you in C-South?

22 A I can't give you a specific date as to what day it
23 was.

24 MR. GAVIN: Could you pull up 8, ma'am?
25 Ms. Taylor?

Brandon Lemagne - Cross

22

1 THE COURT: Are we okay here?

2 MR. GAVIN: It's not electronic. It's physical.

3 Do you have the government's paper exhibits?

4 MS. TAYLOR: Exhibit 8, physical Exhibit 8.

5 THE COURT: Is Exhibit 8 in that bunch?

6 MR. GAVIN: Mr. Spivey, I'm going to need 9 as
7 well, if you're looking.

8 THE COURT: Why don't we give him 8 first.

9 MR. GAVIN: They are in the same bag.

10 THE COURT: Okay. Same bag. He's got both 8
11 and 9 now. He just didn't know it.

12 BY MR. GAVIN:

13 Q Can I ask you to identify these again, Mr. Lemagne?

14 A Those were the things that I had written down when I
15 was trying to figure out exactly what happened to me.

16 Q All right. So the first one, which is
17 Government's 8, do you recognize that document?

18 A Yes.

19 Q What does it say at the top?

20 A It says "2:19 to 3:00 Legins entryway exposed."

21 Q Now if you look at number 9 behind that?

22 A Uh-huh.

23 Q What's the date on that?

24 A It says "Saturday compound."

25 Q Is there a date on that?

Brandon Lemagne - Cross

23

1 A It says "2" -- excuse me -- "2/17/18."

2 Q So if you told Special Agent Lavender that the first
3 day that Mr. Legins exposed his penis to you was the day
4 in C-South, how could that have been two days after the
5 second date where you say he gave you cigarettes or
6 exposed himself to you in the compound office?

7 A I'm not really sure what you're asking me.

8 Q Well, Number 9 is dated 2/17.

9 A Right.

10 Q All right. That's supposedly the second day. It
11 says "compound."

12 A Uh-huh.

13 Q Exhibit 8 is 2/19.

14 A Uh-huh.

15 Q Well, that's the first day. So the 19th is after the
16 17th, the second day that you say. So I'm trying to
17 understand are those dates mixed up or do you just not
18 recall?

19 A I'm not sure what those dates are.

20 What I can tell you was that I wasn't writing
21 things down as they happened. So it wasn't a thing where
22 he would do something and I would make a note of it with
23 the intent to report it. What happened was I went back
24 and did my best to recall dates and figure out exactly
25 what day he did what. The result of me writing that down

Brandon Lemagne - Cross

24

1 over the course of a few days are these documents. That's
2 why they are different color pens. That's why it's
3 different color papers, because I was trying to figure out
4 what happened to me.

5 What dates are on there, whether the dates are
6 incorrect or whether -- I don't know if they're a few days
7 off. I don't -- I can't explain that. The only thing
8 that I can tell you is that I wrote those dates down to
9 the best of my recollection.

10 Q When did you write them down?

11 A I wrote the dates down after the first time he
12 assaulted me in the elevator. I went back to my cell, and
13 just like I told you, my intent at that point was to turn
14 him in. And I started trying to figure things out. I
15 started trying to recall what days he had done what. So
16 like I said, the result of that, over the course of the
17 next few days, I kind of went back and forth with myself
18 trying to figure out, you know, if I was actually going to
19 turn this guy in. And the result of that, like I said,
20 were these papers.

21 Q Did you tell Special Agent Lavender that, that it was
22 just an estimate?

23 A I told him that I didn't know dates, and then I
24 explained to him that I had wrote everything down to the
25 best of my recollection as I could remember it. That's

Brandon Lemagne - Cross

25

1 what I told him.

2 Q But these dates were written down after the March 16,
3 2018, incident?

4 A These dates were written down after the incident in
5 the elevator.

6 Q So you don't really know, as you sit here today,
7 whether Mr. Legins exposed himself to you on 2/17 or 2/19,
8 frankly?

9 A I don't have a Palm Pilot. I don't -- I can't -- I
10 don't know the exact date. What I know is that he exposed
11 himself to me.

12 Q You testified Friday that on the date that you went
13 to the compound office, you went with the expectation of
14 getting cigarettes but that you didn't get any; is that
15 correct?

16 A Correct.

17 Q Did you tell Special Agent Lavender that on the date
18 that you went to the compound office you got cigarettes
19 from Mr. Legins?

20 A Who is Special Agent Lavender?

21 Q It's the gentleman seated right here.

22 A The FBI. Okay. Thank you. Chip.

23 Q Did you tell him that?

24 A Did I tell him that I expected to get cigarettes
25 from --

Brandon Lemagne - Cross

26

1 Q No. That you actually obtained cigarettes from
2 Mr. Legins when he was in the compound office.

3 A I don't remember getting cigarettes from him that
4 day.

5 Q I guess the question is do you remember telling
6 Special Agent Lavender that?

7 A I remember telling him -- I can't say that I remember
8 telling him that.

9 Q Did you double down on the date, Mr. Lemagne, by
10 giving reference to Special Agent Lavender of a particular
11 thing that entered your mind, that secured the date in
12 your mind? In particular, cleats that were being ordered
13 by your roommate?

14 THE COURT: Why don't you confront him with
15 exact -- I gather you have an FBI 302?

16 MR. GAVIN: Yes, sir.

17 THE COURT: Why don't you confront him. I think
18 the appropriate way to do this is do you remember saying
19 to Agent Lavender the following.

20 BY MR. GAVIN:

21 Q Do you remember telling Agent Lavender, Mr. Lemagne,
22 that you recall that date specifically the first time
23 because it's that day that your roommate ordered cleats
24 from the commissary?

25 A I remember referencing cleats, yes.

Brandon Lemagne - Cross

27

1 Q I'm sorry?

2 A I remember referencing cleats, yeah. I remember
3 believing that Zell had ordered cleats on that particular
4 day.

5 Again, this is me trying to recall something
6 that had happened -- I didn't write down that date, the
7 day that it happened. I didn't -- like I said, I went
8 back and I'm trying to piece things together. So I
9 remember thinking that the day that Zell purchased cleats
10 was the day that that happened. I remember that that was
11 one of his store days. So, yeah, I was trying to figure
12 out what was going on.

13 Q So that's what you used to provide credibility to
14 your memory that it was that particular day?

15 A I guess you could say that.

16 Q All right. I'd like to move forward to the
17 March 16th incident.

18 MR. GAVIN: Ms. Taylor, could you pull up that
19 time frame?

20 MS. TAYLOR: Is that Exhibit 1 or Exhibit 2?

21 MR. GAVIN: Let's watch and see.

22 THE COURT: Can Officer Spivey take back
23 Exhibits 8 and 9?

24 MR. GAVIN: Yes, he can.

25 It's 18:28:57.

Brandon Lemagne - Cross

28

1 THE COURT: Are we going back to the
2 surveillance?

3 MR. GAVIN: Just a small bit.

4 THE COURT: So we're going to cross our fingers
5 and hope this thing works.

6 MS. TAYLOR: Oops. Sorry.

7 THE COURT: Can we bring it up?

8 MR. GAVIN: Let him set it before you start.

9 BY MR. GAVIN:

10 Q Mr. Lemagne, on March 16 after the incident in the
11 elevator took place, you went down to Echo -- well, you
12 were in Fox North, correct? You first went to Fox North?

13 A I'm not sure what unit I started in.

14 Q All right.

15 MR. GAVIN: Let's play the video. If you could
16 play it through 18:30:27 time.

17 THE COURT: Nobody is seeing it.

18 THE CLERK: It's up. It should be --

19 MS. TAYLOR: That's the projector.

20 THE COURT: I can see it.

21 Is it on your monitors?

22 MR. GAVIN: I can see it.

23 A JUROR: No.

24 THE COURT: All right. It's not on their
25 monitors. Will you all tell me if you can see it on your

Brandon Lemagne - Cross

29

1 monitor?

2 MR. GAVIN: Is that on? Do we need to click
3 that off?

4 THE CLERK: It's off. It should be playing. It
5 worked this morning.

6 THE COURT: All right. Here's what we're going
7 to do. Ms. Garner is going to call our IT people to get
8 them up here. While she's doing that, why don't you move
9 to a different area. Then you can swing back to this,
10 because I don't want to waste time on this.

11 MR. GAVIN: I understand.

12 BY MR. GAVIN:

13 Q On March 16, Mr. Lemagne, that's the date that
14 Mr. Legins allegedly had you in the elevator and forced
15 you to you perform oral sex on him; is that correct?

16 A Okay.

17 Q And in your affidavit -- I'm going to hand you this,
18 Mr. Legins -- Mr. Lemagne, and see if you can identify it.

19 THE COURT: Do you want to mark that as an
20 exhibit?

21 MR. GAVIN: Yeah. I have it marked as
22 Defense 10.

23 This was previously identified last week, but it
24 wasn't introduced.

25 THE COURT: That's fine.

Brandon Lemagne - Cross

30

1 BY MR. GAVIN:

2 Q Do you recognize that, Mr. Lemagne?

3 A Uh-huh. Yes, I do.

4 Q And is that the affidavit that you provided to
5 Lieutenant McWilliams?

6 A That was the affidavit that Lieutenant McWilliams
7 wrote.

8 Q And did you initial -- are they your initials beside
9 each sentence?

10 A I did. Yes, I did.

11 Q And then you signed it that day?

12 A I believe I did, yes.

13 Q And the last page indicates that that signature is
14 under oath. Did you understand that that statement was
15 being made under oath?

16 A Yes.

17 MR. GAVIN: I'd like to admit that as D-10,
18 Your Honor.

19 THE COURT: Is there any objection?

20 MS. GILBERT: No objection, Your Honor.

21 THE COURT: All right. Admitted.

22 (Defendant Exhibit Number 10 was admitted.)

23 BY MR. GAVIN:

24 Q If you look at paragraph 14 of your affidavit, can
25 you read the third sentence where it starts, "He came

Brandon Lemagne - Cross

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1 everywhere," from there to the end?

2 A "He came everywhere." Excuse me. "He came
3 everywhere. On my folder, all over the floor, on my
4 sweater. It was gross. I got back to the unit and felt;
5 like he was not going to get away with this shit. So I
6 put the sweater in a plastic bag."

7 Q All right. So the folder you're talking about, is
8 that the folder that you carried around to post flyers in
9 various units?

10 A I believe so, yes.

11 Q And did that folder, and the contents in the folder,
12 go all over the floor?

13 A Yes.

14 Q And in that folder, because it was all over the
15 floor, did you remember that Mr. Legins' ejaculate, for
16 lack of a better term, went all over your papers?

17 A I remember there being papers scattered on the floor.
18 I remember your client coming all over my clothes, on my
19 face. I can't -- I don't remember exactly where his semen
20 went. No, I don't.

21 Q Well, your affidavit just says it went all over your
22 papers.

23 A I'm sure that there was probably some there. It
24 went --

25 Q When you left the elevator, what did you do next?

Brandon Lemagne - Cross

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1 A I remember walking out of the unit. I remember
2 getting really upset. I remember feeling really violated
3 and angry, and I remember going back into the elevator and
4 trying to clean it up.

5 Q Do you remember stopping at the door at Fox North and
6 having to wait for a period of time before the officer of
7 that unit could let you out of the exit?

8 A That probably happened.

9 Q Do you remember that officer walking over to you and
10 actually looking at your entire file folder, opening it
11 up?

12 A That may have happened as well, but no, I don't
13 remember that. This was over two years ago.

14 Q Did you tell the officer what had happened?

15 A No, I did not tell the officer what had happened.

16 Q Did the officer ask you anything about -- anything
17 strange about the folder?

18 A Not that I can remember, no.

19 Q Had you already been that day into Echo unit?

20 A It's quite a possibility. I have two jobs. So, you
21 know, there may have been a chance that I had been in
22 there handing out information from education. I --

23 Q So whose idea was it to go into the elevator in the
24 first place? Did you ask to go to the E unit?

25 A What do you mean?

Brandon Lemagne - Cross

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1 Q On March 16th when you and Mr. Legins were in the
2 corridor, did you say, "I need to go to the E unit" or did
3 you -- or was that Mr. Legins' suggestion just to open the
4 elevator for no reason?

5 A He -- I can't access the elevator. Like, a staff
6 member has to access the elevator. So he opened the
7 elevator and motioned for me to go in.

8 Q Did you ask him to open the elevator door so you
9 could go to the lower unit?

10 A No. He did that.

11 Q All right. So when you went downstairs after you
12 exited Fox North, you went back into the lower unit Echo;
13 is that correct?

14 A When I exited Fox North, I went -- when I exited Fox
15 North -- after he raped me in the elevator, I exited into
16 the unit across from him, which would be, I believe -- I
17 believe that's E-North or E-South. I exited in the unit
18 across from him.

19 Q And did you go into that unit?

20 A Yes, I did.

21 Q And you walked back to the elevator, the same one
22 that you had just evidently been raped in?

23 A Yes.

24 Q And why did you go back there?

25 A I walked into the unit across from him. I went out

Brandon Lemagne - Cross

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1 of the unit across from him. I went downstairs and then I
2 went back into the elevator.

3 Q Why did you go back to the elevator?

4 A Because I was very angry, and at that point my
5 intention was to say something about what had been
6 happening to me. I was really fed up with everything that
7 was going on, and I was over it. At that point my
8 intention was to turn him in.

9 Q And I think you testified that you had a paper towel.
10 Where did you get the paper towel before you went to the
11 elevator?

12 A There are 10 or 12 units on Petersburg, and I have 15
13 minutes to post a flyer in every unit. So many times I
14 make it a point, because I have other things that I want
15 to do with my evening, to run that dash in 10 to 15
16 minutes. So a lot of times I'll keep a paper towel in my
17 pocket. I'll keep a rag in my pocket. I'm sweating. I'm
18 trying to post all of these flyers. I'm up and down
19 stairs. I'm running trying to get this done, basically.

20 So I usually have a paper towel or something in
21 my pocket to, you know, wipe my brow so that I can get
22 this done. So I would assume that that's probably where I
23 got the paper towel.

24 Q When you say you assume, are you sure or are you just
25 guessing?

Brandon Lemagne - Cross

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1 A I keep a paper towel in my pocket when I'm running --
2 when I'm running errands.

3 Q So -- this is a big day. So you're thinking that you
4 pulled the paper towel out of your pocket to clean up the
5 semen in the elevator, but you're not sure?

6 A I had a paper towel. I had a piece of paper, yeah.

7 Q All right. So as I recall your testimony, you went
8 back and you took your sweatshirt off, and you preserved
9 it for purposes of evidence. What did you do with the
10 paper towel?

11 A To be honest with you, I have no idea where that
12 paper towel went after I decided that I wasn't going to
13 say anything about what happened to me. I have no idea
14 where it went. It could have been anywhere.

15 Q Wouldn't that paper towel have been the best piece of
16 evidence that you could ever have if you wanted to
17 prosecute or report Mr. Legins?

18 A I wasn't sure what was -- I didn't know -- I just
19 decided that I wasn't going to say anything about
20 Mr. Legins.

21 Q Then why did you keep the sweatshirt?

22 A The sweatshirt was already there and in the back of
23 my locker. So the sweatshirt was hardly on my mind. Like
24 I said, after that incident, over the course of the next
25 couple of days, I went back and forth about what I was

Brandon Lemagne - Cross

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1 going to do. The sweater was already there. The sweater
2 was already in my locker, and it wasn't necessarily
3 something that -- I wasn't thinking about the sweater.

4 Q Is there any reason why you couldn't have put the
5 paper towel in the same bag with the sweatshirt if you had
6 wanted?

7 A I don't -- I don't know what happened to that paper
8 towel.

9 MR. GAVIN: Are we any closer?

10 THE COURT: Is it working yet? What else do we
11 have to do?

12 THE CLERK: Can you switch to input 2?

13 MR. GAVIN: Judge, I can keep moving.

14 A I was under the --

15 THE COURT: Hold on. Don't talk. We're trying
16 to fix it.

17 (Discussion off the record.)

18 THE COURT: Why don't we do it real quick before
19 we lose it. All right.

20 Do you know what you're doing, Ms. Taylor?

21 MS. TAYLOR: Mr. Gavin, do you want me to play?

22 MR. GAVIN: Yep. Ready.

23 (Video Played.)

24 THE COURT: Mr. Lemagne, is it on your screen,
25 too?

Brandon Lemagne - Cross

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1 THE WITNESS: It is.

2 THE COURT: Okay.

3 (Video Played.)

4 MR. GAVIN: I'm sorry, Your Honor. This is --
5 this is not -- this is Fox South, and I need Fox North.
6 Same time frame.

7 MS. TAYLOR: Okay.

8 MR. GAVIN: That's it.

9 THE COURT: Is that the one?

10 MR. GAVIN: Yep.

11 (Video Played.)

12 BY MR. GAVIN:

13 Q Mr. Lemagne, do you recognize yourself in that
14 picture, in the highlighted circle?

15 A Uh-huh. Yes, I do.

16 Q This is after you had just been in the elevator with
17 Mr. Legins; is that correct?

18 A Yes.

19 MR. GAVIN: It jumped back to Fox South,
20 Your Honor.

21 THE COURT: Well, what do you want to do here?
22 I'm not in charge of the --

23 MR. GAVIN: I understand.

24 MS. TAYLOR: I'm just playing the video.

25 MR. GAVIN: Judge we'll have to -- we'll have to

Brandon Lemagne - Cross

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1 find a way to figure out the individual video. What's
2 happened is the United States did a compilation that has
3 the same time frames with two different areas and theirs
4 keeps jumping back to Fox South instead of continuing on.

5 MS. GILBERT: Mr. Gavin, we have all the
6 unedited videos if you know which one you need.

7 MR. GAVIN: Yeah.

8 MS. GILBERT: Which one?

9 MR. GAVIN: It would be Fox North March 16th.
10 Common area.

11 MS. GILBERT: Common area or exit door?

12 MR. GAVIN: Both.

13 MS. GILBERT: Which one do you want first?

14 MR. GAVIN: Common area.

15 THE COURT: Has that been introduced into
16 evidence yet or not?

17 MR. GARNETT: They were all entered, Your Honor.
18 Government Exhibit 1 included both the compilation video
19 as well as a series of smaller videos that form that
20 compilation video.

21 THE COURT: All right. That's fine. So it's
22 part of the Government Exhibit 1.

23 MR. GARNETT: Yes, Your Honor.

24 (Video Played.)

25 MR. GAVIN: Up to 18:28.

Brandon Lemagne - Cross

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1 MR. GARNETT: Is that too far, Chuck?

2 MR. GAVIN: No. That's good.

3 THE COURT: All right. So we're at 18:28:15.

4 Okay. What's your question?

5 (Video Played.)

6 BY MR. GAVIN:

7 Q Mr. Lemagne, the video that's going to be in front of
8 you is going to be the same video that you just saw
9 wherein you identified yourself in a circle. It's just
10 not quite there yet.

11 (Video Played.)

12 BY MR. GAVIN:

13 Q Is that you walking down --

14 A Yeah.

15 Q -- the row of cells?

16 A Yes.

17 Q This is right after the elevator incident?

18 A Uh-huh. Yes, it is.

19 Q Are you carrying your papers right there in your left
20 hand?

21 A Yes. I believe that's the folder.

22 Q Mr. Lemagne, is that you standing outside of -- or on
23 the interior, actually, of the Fox North exit door?

24 A Yes.

25 Q And what are you doing there?

Brandon Lemagne - Cross

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1 A The door looks like it's locked. I'm waiting.

2 Q Is that the folder in your left hand?

3 A Uh-huh.

4 THE COURT: Is that a yes?

5 THE WITNESS: Yes, it is.

6 THE COURT: For the record, we're at 18:29. We
7 were at 10.

8 (Video Played.)

9 BY MR. GAVIN:

10 Q Do you know Correctional Officer Mr. Farmer?

11 A Yes, I know Farmer.

12 Q Was he in control of this unit on that particular
13 day?

14 A There he goes. Yes.

15 Q Is that him?

16 A That's Farmer.

17 Q Is that Mr. Farmer looking at all your paperwork?

18 A No. I think that was probably Farmer saying -- I
19 don't know. He may have been asking what the movie was.
20 I saw myself open the folder and show him.

21 Q Do you show Mr. Farmer any of the semen that went all
22 over your paperwork?

23 A No.

24 MR. GAVIN: That's all I have. Thank you,
25 Ms. Taylor.

Brandon Lemagne - Cross

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1 BY MR. GAVIN:

2 Q All right. I'd like to move next to, Mr. Lemagne, to
3 the May 10th incident. So you never ever reported
4 anything with respect to the March 16th incident, correct?

5 A No.

6 Q All right. So on May 10th --

7 THE COURT: Was there an answer? I'm sorry.

8 THE WITNESS: I said no.

9 THE COURT: Okay.

10 BY MR. GAVIN:

11 Q You're going back into the unit. Did you know that
12 Mr. Legins would be working that particular day on
13 May 10th on the evening watch?

14 A No. I wasn't really thinking about or aware of
15 Mr. Legins.

16 Q When you went in there and you saw Mr. Legins working
17 Fox South on the evening watch and he invited you to walk
18 through the corridor, you were just headed to the Fox
19 North side, correct? That's what you thought?

20 A Did I think that I was headed to the Fox North side
21 is what you're asking me?

22 Q Yes, sir. Was that the next move? Is that where you
23 were headed?

24 A I guess at that time I was probably assuming that
25 that's what would happen, but I remember when he motioned

Brandon Lemagne - Cross

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1 me, I remember thinking that he had a pack of cigarettes
2 for me.

3 Q Was your next stop that you had planned to post
4 flyers Fox North?

5 A This was two years ago. I don't remember what unit I
6 planned to go into next to post flyers.

7 Q Do you remember being fearful of going into that
8 corridor with Mr. Legins at all?

9 A I had seen Mr. Legins more than half a dozen times
10 since the last time. I had picked up cigarettes from him.
11 I had had conversations with him in that unit. I had
12 conversations with him on the compound. I had been with
13 him alone. I had been with him in front of people.

14 Mr. Legins was back to being completely normal
15 and completely friendly, and I didn't have any reason to
16 be fearful. I didn't have any reason not to go where he
17 was asking me to go.

18 MR. GAVIN: All right. Your Honor, if I could
19 show some of these pictures again.

20 THE COURT: Do you want to give us exhibit
21 numbers? All right. Hold on a second. Before they're
22 displayed, have they been already admitted?

23 MR. GAVIN: Yes, sir.

24 THE COURT: Okay. That's fine. Just give us
25 the exhibit number as they are displayed so there's a

Brandon Lemagne - Cross

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1 record of what's going on.

2 MR. GAVIN: Judge, all these exhibits are under
3 D-8?

4 THE COURT: I'm sorry?

5 MR. GAVIN: D-8.

6 THE COURT: D-8.

7 MR. GAVIN: And then there are letters
8 associated with them.

9 The first one I'm going to ask Ms. Brown to pull
10 up is D-8B.

11 BY MR. GAVIN:

12 Q And do you recognize those doors, Mr. Lemagne?

13 A They look like the doors headed into the counselor
14 area.

15 Q That's the --

16 THE COURT: Hold on. You're not seeing
17 anything?

18 A JUROR: No.

19 THE COURT: Is everybody not seeing anything?

20 All right. Cheryl, can you do something?

21 We're good now? Okay.

22 MR. GAVIN: All right, Ms. Brown. If you could
23 pull down the picture just low enough to reflect the
24 exhibit sticker. So that's D-8B.

25 BY MR. GAVIN:

Brandon Lemagne - Cross

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1 Q And these have already been introduced, Mr. Lemagne.

2 So if I represent to you that they are the doors that

3 enter the corridor from Fox South headed to Fox North,

4 does that refresh your recollection?

5 A I -- I said that that's what they look like.

6 Q All right. So Mr. Legins would have had to have

7 opened those doors with a key, correct?

8 A Correct.

9 Q When he went to the other side of those doors, did he
10 close those doors back?

11 A Yes. They close automatically.

12 Q They were closed. Either through Mr. Legins or
13 automatically, they would be closed?

14 A There's a spring on the doors. The doors close, and
15 when an officer goes through a door, he turns around and
16 he locks it.

17 Q All right. So the door may have closed by a spring,
18 but Mr. Legins was still required to physically lock the
19 door?

20 A I believe so, yes.

21 MR. GAVIN: Ms. Brown, will you pull up D-8C?

22 BY MR. GAVIN:

23 Q Does that fairly reflect the corridor, looking from
24 the outside of the doors all the way to the other side on
25 Fox North?

Brandon Lemagne - Cross

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1 A Yes.

2 Q And the unit office, is that the door that you see up
3 there, the second door on the left where the exit sign is
4 located, the second exit sign?

5 A Yes.

6 Q So when you walked through these doors, Mr. Legins
7 would have had to relock the opening doors in the
8 corridor. We've already established that. Was the second
9 door also closed and locked?

10 A The second door as in the door --

11 Q The door to the office area.

12 A I believe the office door was locked. I can't
13 remember offhand whether he unlocked it or not.

14 Q Have you ever been through that corridor where it has
15 not been locked?

16 A Many times.

17 Q With the door open?

18 A I've been through that corridor many times, and, I
19 mean, there are probably six doors on this screen.
20 Sometimes the doors are unlocked.

21 Q Do you remember on May 10th, whether the door was
22 locked on May 10th when you went through the corridor, the
23 office door area?

24 A I can't remember whether that door was locked or
25 open.

Brandon Lemagne - Cross

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1 MR. GAVIN: Ms. Brown, can you go to D-8D?

2 A Actually, I believe that door was open.

3 BY MR. GAVIN:

4 Q What caused you to have that conclusion after your
5 prior testimony?

6 A Because I remember walking through it.

7 Q But you don't remember how it was opened?

8 A I mean, I didn't live in that housing unit.

9 MR. GAVIN: Ms. Brown, you can move forward
10 beyond this one to D-8E.

11 BY MR. GAVIN:

12 Q Is that the door that we're talking about, the office
13 door?

14 A Yes.

15 MR. GAVIN: Ms. Brown, D-8F.

16 BY MR. GAVIN:

17 Q Does D-8F recognize the view from the hallway into
18 the unit office area?

19 A Yes.

20 Q And that door that's open in the foreground, is that
21 the bathroom area?

22 A Yes.

23 MR. GAVIN: Ms. Brown, could you move to G?

24 BY MR. GAVIN:

25 Q Is that the same unit office area with you being

Brandon Lemagne - Cross

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1 inside and viewed back to the corridor hallway?

2 A Yes.

3 Q So that's where you and Mr. Legins were at this
4 point?

5 A Yeah. We eventually ended up in that room, yes.

6 Q All right. Do you remember Mr. Legins having to lock
7 that door back? When I say "that door," I'm talking about
8 the door between the corridor and the office area.

9 A Do I remember him locking the corridor or do I
10 remember him locking the office door?

11 Q The office door.

12 A After he raped me, I wasn't really paying any
13 attention to what he was locking. I wasn't thinking about
14 whether or not he locked the counselor door.

15 Q I'm just asking you, Mr. Lemagne, if you recall
16 whether or not he had to lock that door back after you
17 entered the room?

18 A I -- like I said, after he raped me, I do not
19 remember him locking that door or whether he locked it or
20 not. That was the furthest thing from my mind.

21 MR. GAVIN: Ms. Brown, could you go to H?

22 BY MR. GAVIN:

23 Q All right. Is this a view from sort of the office
24 door back towards the back where the incident allegedly
25 took place?

Brandon Lemagne - Cross

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1 A Yes.

2 MR. GAVIN: And, Ms. Brown, could you go to I?

3 BY MR. GAVIN:

4 Q Do you recognize that picture?

5 A Yeah, I do.

6 Q All right. So is that the area where you believe
7 that the incident took place?

8 A Yes.

9 Q And there's a pole on the right of the picture. Is
10 that, in particular, the place that you allege it look
11 place?

12 A Yes.

13 Q All right. So in regard to your testimony, you
14 indicated that you and Mr. Legins went into the room and
15 after the door was closed, he grabbed you from behind and
16 then pushed you back into this back area; is that correct?

17 A He pushed me back right here where you see the pole
18 and the wall meet; that's the area that he pushed me to.

19 Q And as he pushed you across the floor, you indicated
20 that you tried to walk away from him at least twice; is
21 that correct?

22 A Not quite. I indicated that he grabbed me by the
23 buttocks and kind of walked backwards with me. When we
24 got to that area, yes, I tried to walk away from him
25 twice.

Brandon Lemagne - Cross

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1 Q So do you have any idea or recollection how much time
2 that took?

3 A Less than 20 seconds.

4 Q Did you ever tell anybody how much time that took?
5 Special Agent Lavender? Anyone else?

6 A I don't recall.

7 Q What were you wearing that day in addition to your
8 shirt?

9 A The same thing I wear every day. I was wearing
10 grays.

11 Q Were you wearing a poncho that day?

12 A I was wearing a poncho, yes.

13 Q Can you describe the poncho? Was it a real poncho or
14 was it one of those throw-away ponchos that you get --

15 A It's a plastic poncho.

16 Q Just a very light plastic?

17 A It's a clear plastic poncho.

18 Q But is it a poncho, sort of like a clear plastic
19 poncho, a throw-away that you get at the amusement park
20 when it's raining and you didn't bring your umbrella or
21 your rain coat?

22 A I'm not really familiar with that type of poncho. I
23 just know that it's something that keeps the rain off of
24 you.

25 Q Is it very, very thin?

Brandon Lemagne - Cross

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1 A It was a regular poncho.

2 Q Did that get torn in this incident at all?

3 A I didn't -- I don't remember whether it got torn or

4 not. I know that it was just a regular poncho.

5 Q But this poncho was over the short and the shirt that

6 you say was torn?

7 A My poncho -- when he assaulted me, my poncho was

8 twisted. I don't know if that makes sense. Or my poncho

9 was arranged. But my poncho was not in the way. He

10 pulled my poncho. Like the poncho wasn't obstructing my

11 body.

12 Q All right. Mr. Lemagne, the next thing you

13 indicated, that he forced you to perform oral sex and

14 asked you to squat; is that correct?

15 A Yeah.

16 Q And then you performed oral sex on him for a period

17 of time. Do you have any idea how long that period of

18 time was?

19 A After he pushed me down by my shoulders, I -- it was

20 a short period of time. That's what I can tell you.

21 Q Do you remember telling the nurse that he did it for

22 a while until he was done with that?

23 A I may have said that, yes.

24 Q So after that, you indicated that he pulled you up.

25 And then did he remove your pants or did you remove your

Brandon Lemagne - Cross

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1 pants?

2 A He told me to turn around, and he pulled my pants
3 down.

4 Q Did you resist at all?

5 A After he snatched me back twice and ripped my shirt,
6 I didn't feel like I should resist anything. He's
7 400 pounds. I mean, I did exactly what he told me to do.

8 Q And then, Mr. Lemagne, you indicated that Mr. Legins
9 used his own spit several times to provide lubrication
10 before he penetrated you; is that correct?

11 A It sounded like he used his spit. I remember him
12 spitting. I remember him removing his hand out of my
13 mouth and, like, wetting my rectum area. I wasn't really
14 turned around to, you know, see exactly what the
15 arrangement was. He was raping me.

16 Q And in your affidavit, you indicated that that was at
17 least five minutes long?

18 A I indicated that when Lieutenant McWilliams wrote my
19 affidavit, it wasn't verbatim. I was talking very fast.
20 And she's a lieutenant. She's not a secretary. So she
21 couldn't type nearly as fast as I was talking. So while
22 this is generally what I said, it's not my words, and it's
23 not specific.

24 Q Do you have any reason to think why Lieutenant
25 McWilliams would write in your affidavit that it lasted

Brandon Lemagne - Cross

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1 like five minutes if you didn't say that?

2 A The same reason why she wrote the date that I got
3 there as November 30th, 2016. I didn't say that either,
4 but it's there.

5 Q Did you ever tell anybody else -- Mr. Lavender, any
6 other agent -- that it lasted approximately five minutes?

7 A I don't know how long it lasted. It happened.
8 Whether it was five minutes, three minutes, two minutes,
9 it happened.

10 Q So after it happened, you indicated that you sort of
11 just sat on the floor while Mr. Legins went to the
12 bathroom; is that correct?

13 A After he raped me and he told me to turn around and
14 catch it, I remember watching him come in his hand. And I
15 remember when he was finished ejaculating, I remember just
16 kind of being frozen there. And I remember him turning
17 around, and I remember him going into the bathroom. I was
18 still standing at the pole.

19 Q All right. So while he was in the bathroom, were you
20 just standing at the pole?

21 A For a portion of that time. And then after that, I
22 remember trying to get my poncho together and twist my
23 poncho back around, and I remember just trying to get
24 myself together and get out of the office.

25 Q Was -- when you started retwisting or adjusting your

Brandon Lemagne - Cross

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1 poncho, was that after Mr. Legins had exited from the
2 bathroom or before?

3 A I remember when he was walking out of the bathroom, I
4 remember being kind of frozen there. My clothes were
5 already arranged. I just remember looking like -- I
6 didn't really know what to do. I didn't know whether to
7 leave. I didn't know whether to go. I remember being a
8 bit frozen.

9 Q Do you know how long he was in the bathroom? You
10 indicated you heard water running.

11 A I did hear water running.

12 Q Was water running for a period of time by itself?
13 Just water running?

14 A I remember him walking into the bathroom. I remember
15 the water running. I remember the water cutting off, and
16 I remember him exiting the bathroom.

17 Q Was there any point in time that you heard a toilet
18 flush?

19 A I did hear a toilet flush.

20 Q Was that after the water had stopped running or was
21 that at the same time the water was running, if you
22 remember?

23 A Would you remember?

24 THE COURT: You just have to answer yes or no.

25 A I don't remember whether he flushed -- I don't

Brandon Lemagne - Cross

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1 remember what order the toilet flushed or the water
2 stopped running. I remember that the toilet flushed, and
3 I remember that the water cut on, and I remember him
4 exiting the bathroom.

5 BY MR. GAVIN:

6 Q When he told you to clean up, was that after he left
7 the bathroom or before?

8 A This was before he walked into the bathroom.

9 Q All right. After that happens, you guys leave. Do
10 you have to unlock the door that enters into the corridor
11 or was it already open?

12 A The corridor was -- you're talking about the outer
13 door, not the office door, correct?

14 Q I'm talking about the office door that leads into the
15 corridor door.

16 A Uh-huh.

17 Q Was that door closed while this incident was taking
18 place?

19 A The door was closed.

20 Q So did he have to unlock the door before you entered
21 back into the corridor?

22 A When we exited, no. I don't remember unlocking that
23 door. I remember him opening the door and walking out.
24 And I remember him kind of holding the door open, and I
25 exited out after him.

Brandon Lemagne - Cross

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1 Q Did he lock the door back?

2 A My back was turned to him, and I wasn't thinking
3 about that. I was waiting for him to open the door in
4 front of me so that I can exit and get away from him.

5 Q All right. So that's when you went to the Fox North
6 door?

7 A Correct.

8 Q And that's where you exited, correct?

9 A Correct.

10 Q Then you went to -- later to the nurses station,
11 medical, there at the facility, correct?

12 A Then I went where? I'm sorry.

13 Q To the medical facility at Petersburg Medium. Do you
14 remember going to the medical person to see you after you
15 had reported the incident?

16 A Well, I -- eventually I ended there. A lot happened
17 between me leaving F-North and going to medical. But
18 eventually I did go to medical.

19 Q Do you remember being seen by a particular medical
20 technician there by the name of Ms. Ramsey?

21 A I'm not sure what her name was.

22 Q Do you remember telling her exactly what happened?

23 A Yeah. I remember talking to her.

24 Q Do you remember telling her that he finished in me,
25 he ejaculated in me? Do you remember telling her that?

Brandon Lemagne - Cross

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1 A No.

2 Q Did you ever tell anybody else that?

3 A No. And I -- I do remember coming back into the room
4 after making a statement to Ms. Ramsey and her rewriting
5 an entire statement from her memory, from beginning to
6 end, because apparently when I left, something happened.
7 Somehow the statement got deleted. And after I spoke with
8 Dr. Wolf and I came back into the room, she was trying to
9 retype the statement based off of her memory.

10 Q So your belief is that if Ms. Ramsey wrote in her
11 note, "he finished in me, he ejaculated in me," that she
12 must have been mistaken what she heard from you?

13 A I don't remember specifically verbatim saying that to
14 her, no, I don't.

15 Q Did you ever tell Lieutenant McWilliams that same
16 story or version?

17 A I told both of them the same story. I told them what
18 happened to me.

19 Q Do you remember telling the medical technician that
20 was recovering your clothes that you didn't want to sit
21 down because you were afraid that Mr. Legins' semen might
22 run out of you?

23 A I do remember saying that. I was also concerned
24 about his saliva and DNA in general.

25 Q When you got to the hospital -- well, let me ask you

Brandon Lemagne - Cross

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1 this. Between the time that the incident happened and the
2 time that you went to the hospital, had you done anything
3 to wash yourself or did you follow their instructions
4 about you can't do anything, wash, shower, take a bowel
5 movement, anything like that?

6 A Yes.

7 Q And did you?

8 A No.

9 Q So you didn't wash. You didn't have a bowel
10 movement. All the fluids that would have been on you
11 would have still been there or recovered in evidence,
12 correct?

13 A Correct.

14 Q Mr. Lemagne, were you part of a conference call
15 sometime around December 21st, 2018, with the FBI and the
16 OIG?

17 A I don't -- again, I'm in prison. I don't necessarily
18 have dates.

19 Q Do you remember a conference call at all?

20 A I do.

21 Q And what was the basis for that conference call?

22 A Probably this case.

23 Q Did they tell you that they had enough evidence to
24 prosecute Mr. Legins, that they were going to move
25 forward?

Brandon Lemagne - Cross

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1 A Not in those words.

2 Q In those general terms?

3 A No. They didn't mention evidence at all.

4 Q Do you remember writing e-mails after that conference
5 call to lots of different lawyers?

6 A I remember writing e-mails after that conference call
7 to lots of different lawyers, attorneys, organizations. I
8 remember writing a lot of people at various times in
9 reference to my situation.

10 Q Did you use the TRULINCS system?

11 A Yes, I did.

12 Q Did you include in the e-mails -- was it sort of a
13 broadcast e-mail or did you write every lawyer
14 individually?

15 A I wrote a lot of different organizations on just
16 one -- one broad e-mail. I may have wrote a couple of
17 individual organizations. I'm not sure.

18 Q In your e-mail, did you use some deceptive language
19 to avoid the detection through the TRULINCS system?

20 A I don't know what you mean.

21 Q In other words, did you understand that if you used
22 the word "rape" in your e-mail, that would be picked up
23 and screened by the administration?

24 A My mail and my phone calls were already being
25 monitored. So as far as them picking up rape and as far

Brandon Lemagne - Cross

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1 as them picking up -- everything that I wrote and
2 everything that I communicated from the time of this
3 incident was being monitored, and I know that because the
4 investigative unit on the compound indicated to me that
5 that was the case. So I was already very aware that my
6 phone calls and my e-mails were being monitored.

7 Q All right. But the question is did you use a
8 methodology to avoid detection?

9 A I may have. I may have spaced the words out. I may
10 have, yes.

11 Q Did you include in your e-mail a note that says, "The
12 spaces you are seeing in this document are not typos. The
13 system flags certain words, trying to avoid detection"?

14 A Yeah.

15 Q Do you remember saying that?

16 A Yeah.

17 Q Why would you want to avoid detection?

18 A I wouldn't want them reading or knowing about any of
19 my communications with organizations like the ACLU or GLAD
20 or attorneys or anything like that because I wouldn't want
21 to deal with the repercussions. I wouldn't want to deal
22 with retaliation.

23 Q Any of the lawyers that you contacted, were they
24 civil lawyers?

25 A Yes.

Brandon Lemagne - Cross

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1 Q Did you contact them because you believed that they
2 could represent you in a type of an injury case?

3 A Yeah. I contacted them.

4 Q I'm going to ask you to identify one e-mail if you
5 could, Mr. Lemagne?

6 THE COURT: Do you want to give it an exhibit
7 number?

8 MR. GAVIN: Yeah. It will be Defense 10.

9 THE COURT: You seem to be marking everything
10 Defense 10. And I --

11 MR. GAVIN: Well, Defense 11. I'm sorry.

12 THE COURT: Okay. All right. But I still -- I
13 have your exhibit list, and I don't see anything about
14 a -- are you just kind of winging it here on the numbers?

15 MR. GAVIN: Yeah. This is just cross.

16 THE COURT: All right.

17 BY MR. GAVIN:

18 Q Mr. Lemagne, is this part of one of the e-mails that
19 you wrote?

20 A Yes.

21 Q All right. The first paragraph where it says
22 "Brandon Jarome Lemagne, 2/10/2019" --

23 A Uh-huh.

24 Q -- was that authored by you?

25 A No, it was not.

Brandon Lemagne - Cross

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1 Q You're saying somebody else wrote that e-mail?

2 A No. I'm saying the system wrote Brandon Jarome
3 Lemagne on 2/10/2019. I authored what's under it.

4 Q Okay. Can you read that first paragraph?

5 A "They stopped about eight pieces of outgoing legal
6 mail containing info in reference to me retaining counsel
7 for litigation. That day I sent out your statement of
8 facts, I inquired with several attorneys. I sent out
9 legal mail on the 7th as well. A day later, I got your
10 e-mail confirmation that you did not get the statement of
11 facts. Basically they know I'm trying to sue them and
12 they are trying to stop inquiries. As I told you, I
13 received other legal mail opened and taped. They have
14 returned things with no reason and no notification and
15 have simply not delivered others. I do not have tracking
16 order confirmation on these items. You see how they
17 treated the situation with you, the mail. The open house
18 line is 12 to 15 people long every day. They simply do
19 what they want in the mailroom. I do not know what to do
20 at this point. I'd suggest you possibly issuing them a
21 notification about legal mail procedures or possibly
22 contact SIS Lieutenant Moore. He would be pretty
23 receptive. They don't care what I say honestly."

24 Q And do you remember to which particular lawyer this
25 e-mail was forwarded?

Brandon Lemagne - Cross

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1 A No. I remember being really frustrated about them
2 retaliating against me and doing illegal things with my
3 legal mail.

4 Q And who is "they"?

5 THE COURT: By "they," are you referring to the
6 prison system? Is that what you're --

7 A I'm referring, yeah, to the prison system. I'm
8 trying to communicate and basically talk to organizations
9 or get some relief for what happened to me, and they're
10 illegally opening my legal mail.

11 The messages that I was sending out would take
12 three or four days to go out because the SIS team is
13 reviewing it and probably copying. And even though I was
14 aware of it, I really don't feel like I had anything to
15 hide by trying to get help for what I was going through.

16 BY MR. GAVIN:

17 Q Then why would you use deceptive language to get an
18 e-mail through that wouldn't be detected?

19 A Because that doesn't mean that I want to make it just
20 simply easy for them.

21 Q When it says "they know I'm trying to sue them" --

22 A Uh-huh.

23 Q -- who is the "them"?

24 A The FBOP.

25 MR. GAVIN: May I have just a minute,

Brandon Lemagne - Cross

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1 Your Honor?

2 BY MR. GAVIN:

3 Q Mr. Lemagne, when you were being seen at St. Mary's,
4 you also told the nurse, did you not, that there was maybe
5 semen on your right hand?

6 A Uh-huh. Yes, I did.

7 Q Where did that come from? Do you remember where the
8 semen -- how the semen appeared on your right hand?

9 A The semen came from your client. I don't -- I
10 mean --

11 Q Well, your affidavit indicates that he came in his
12 hand. So how was it that the semen got from his hand to
13 your right hand?

14 A What do you mean?

15 Q You indicated that you believed that there was semen
16 on your right hand.

17 A Uh-huh.

18 Q You asked the med techs, did you not, to make sure
19 that they checked out your right hand? Do you remember
20 that?

21 A Correct.

22 Q Do you remember the med tech actually put a latex
23 glove on your right hand to make sure that that semen
24 would be preserved?

25 A I do remember that.

Brandon Lemagne - Redirect

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1 Q All right. So how was it that you remember that
2 semen got from Mr. Legins to your right hand?

3 A I can't remember what happened specifically to make
4 me feel like there would possibly be semen on my right
5 hand, but I felt like there was a chance that there would
6 be semen.

7 MR. GAVIN: Judge, I don't have any other
8 questions.

9 THE COURT: All right. Any redirect?

10 MS. GILBERT: Yes.

11 MR. GAVIN: Judge, I'd like to move my 11.

12 THE COURT: Do you have any objection to it?

13 MS. GILBERT: No objection, Your Honor.

14 THE COURT: All right. It will be admitted.

15 (Defendant Exhibit Number 11 was admitted.)

16 **REDIRECT EXAMINATION**

17 BY MS. GILBERT:

18 Q Mr. Lemagne, Mr. Gavin asked you some questions just
19 now about why, in May of 2018, you went back into the
20 hallway with the defendant. You testified on Friday that
21 the defendant told you to go with him into the hallway,
22 correct?

23 A Correct.

24 Q In your experience, are inmates free to disobey
25 officers' orders and go wherever they want in the

Brandon Lemagne - Redirect

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1 facility?

2 A Absolutely not.

3 Q To your knowledge, what generally happens to inmates
4 who disobey officers?

5 A It depends on the situation, but you're probably
6 going to get sent to the lieutenant's office, and you're
7 probably going to end up in the SHU for at least 30 days.

8 Q What kinds of things can officers do to inmates who
9 anger them?

10 A On the extreme end, beat them up, call a gang of
11 people to rough them up, drag them down, mace them.
12 Anything that they want. You're in prison. They can
13 retaliate by searching your cell, harassing you, throwing
14 away your personal property, spitting in your food if
15 you're in the SHU. They can do whatever they want to you.

16 Q You testified earlier that when the defendant wasn't
17 sexually abusing you, he acted like he was your friend.
18 What kinds of things did the defendant say to you when he
19 was in the mode of acting like your friend?

20 A "You need anything? What's your books looking like?
21 How's your mom? How's the dialysis going? What's up with
22 your sister? Like, you know, are you all getting along?"
23 Just the types of things that somebody who was your friend
24 and somebody who knew about your life would ask you.

25 Me and my sister have an on-and-off

Brandon Lemagne - Redirect

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1 relationship. My mother is on dialysis. He knows that.
2 He knows that I'd like to get home to take care of my mom.
3 He knows a lot of personal things about me. So the
4 conversations that you would have with your friend about
5 your life and your concerns, those were the things that he
6 would bring up to me.

7 Q And so between the incident in March 2018 when the
8 defendant raped you in the elevator and the incident in
9 May 2018 when the defendant raped you in the unit team
10 secretary's office, were those the kinds of things that he
11 was talking to you about?

12 A Yeah, absolutely. And I -- I saw him many, many
13 times between those incidents. I work in those units. So
14 they are generally -- I mean, I can avoid him, but I
15 really can't avoid him. I have to go into those units,
16 you know, to pass out educational paperwork. I have to go
17 into those units to post flyers. So, I mean, I --
18 generally because of my jobs, I pretty much came into all
19 of the officers on the compound that worked in the units.

20 Q Mr. Gavin also asked you some questions about the
21 timing of what happened during the May 2018 rape.

22 A Uh-huh.

23 Q When the defendant was using his 375 or 400-pound
24 body to move you around the office, were you looking at a
25 clock?

Brandon Lemagne - Redirect

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1 A No.

2 Q When he was violently raping you, were you timing
3 that?

4 A No.

5 MR. GAVIN: Objection to the form of the
6 question.

7 THE COURT: That's sustained. Stop doing that.

8 BY MS. GILBERT:

9 Q After the defendant orally and anally raped you, were
10 you focused --

11 MR. GAVIN: Objection to the form of the
12 question.

13 THE COURT: I just told you to stop doing that.

14 MS. GILBERT: I'm sorry, Your Honor.

15 BY MS. GILBERT:

16 Q After the incident in the office in May of 2018, were
17 you focused on whether the defendant was locking or
18 unlocking the doors of the office?

19 A Absolutely not.

20 Q Mr. Gavin also asked you some questions about why you
21 didn't report what the defendant -- after -- why you
22 didn't report what happened in the elevator of March 2018
23 when you interacted with an officer after that. We talked
24 on Friday about why you feared that nobody would believe
25 you. We don't have to go into that again. What did you

Brandon Lemagne - Redirect

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1 think would happen if you reported the defendant and no
2 one believed you in March of 2018?

3 A All of the retaliation that I've been experiencing, I
4 thought that I would be moved. I thought that I would be
5 chastised. I thought that I would be harassed. I thought
6 that my phone calls, my visits, my mail would be detained,
7 delayed and monitored. I thought that it was going to be
8 very painful for me if I said something about it, and I
9 thought that I was going to look like I guess the person
10 that cried wolf, you know. I already said something about
11 an officer in the laundry room doing something not only to
12 me, but to a lot of LGBT people, and nobody did anything
13 about it. So it's like, okay, so now you're saying this.
14 Really, Lemagne?

15 It didn't seem smart to put myself in that
16 situation because even though I was in prison, I felt like
17 I had a lot to lose. I was on my way up out the door. I
18 was -- I'm about to go home, you know. So for me, you
19 know, it was just like I didn't want to do anything to
20 disrupt everything that I had going on. And I definitely
21 didn't want to do anything that was going to make my life
22 any more difficult in prison because it was difficult
23 enough. So I was afraid of the retaliation and everything
24 that I've been going through.

25 Q Mr. Gavin also asked you about some surveillance

Brandon Lemagne - Redirect

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1 footage that showed you waiting at F-North exit door and
2 he asked you about how you were acting in that footage.
3 In your experience as a prisoner, what happens to inmates
4 who act vulnerable in prison?

5 MR. GAVIN: Judge, I don't know -- this is way
6 beyond the scope of my cross.

7 THE COURT: No. I'm going to overrule the
8 objection.

9 A It's important in prison to have a poker face.
10 Whatever you're going through or whatever you got going
11 on, deal with it, because when you walk out of that cell,
12 you need to look like everything is fine. If you're
13 feeling vulnerable and you're looking vulnerable, somebody
14 is going to take advantage of that. If you're feeling
15 weak and you're looking weak, somebody is going to take
16 advantage of that, whether that be physically them taking
17 something from you, whether that be assaulting you. You
18 need to look like you're good and you got it together.

19 So no matter what is going on, when that door
20 pops and I walk out of that cell, I'm fine. I'm going to
21 look like I'm fine. I'm going to act like I'm fine. I'm
22 good, you know. And that's how I was acting. You know,
23 no matter what's going on, that's how I'm going to act
24 when I'm walking around that compound. Nobody is ever
25 going to know anything that's going on with me.

Brandon Lemagne - Redirect

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1 Q Mr. Gavin also asked you about some e-mails that you
2 sent to attorneys, and in particular, you testified that
3 you knew that your e-mails were being monitored as all
4 inmate e-mails are, but you still didn't want to draw
5 attention to writing e-mails about being raped.

6 A No.

7 Q Why was that?

8 A Again, the retaliation. There was a general belief
9 among officers that had been expressed to me that I was
10 lying.

11 MR. GAVIN: Objection to the speculation there.
12 He's testifying about rumors from other officers.

13 A I'm testifying about what other officers told me.

14 THE COURT: Hold on. I rule, not you. It's
15 overruled. He's explaining why he acted in a certain way.
16 So -- but are we almost done with this?

17 MS. GILBERT: Yes, Your Honor.

18 THE COURT: All right. Why did you do it? Why
19 did you act --

20 A It had already been indicated to me that the general
21 belief was that I had lied on Officer Legins. And
22 officers made it a point to chastise me and harass me and
23 review e-mails and do all sorts of things because of what
24 they knew happened to me at Petersburg.

25 THE COURT: All right. Do you have anything

Brandon Lemagne - Redirect

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1 else?

2 MS. GILBERT: Just briefly, Your Honor.

3 BY MS. GILBERT:

4 Q Mr. Gavin also asked you about an inmate who you
5 referred to as A.J. His last name, I believe, is
6 Erogbogbo.

7 A Correct.

8 Q Mr. Erogbogbo, you said that he's not part of the
9 transgender community. Is it your understanding that he's
10 gay?

11 A I think he's gay. I don't know if he thinks he's
12 gay. I know that he's very into feminine people like me.
13 I don't know how he identifies personally, but I know he's
14 made it a point to approach and proposition everybody in
15 prison that's pretty much feminine. So he's one of those
16 guys.

17 Q Did you ever reject Mr. Erogbogbo sexually?

18 A Yes, several times.

19 Q Ms. Gavin also asked you some questions about your
20 prior conversations with me, other prosecutors and federal
21 investigators. Mr. Lemagne, when I met with you and when
22 agents met with you, federal agents, did they or did we
23 ever tell you what to say?

24 A No.

25 Q Did we ever promise you anything in exchange for your

1 testimony?

2 A No.

3 Q Mr. Gavin also asked you regarding some e-mails with
4 attorneys, and you testified that -- about that on your
5 direct examination. Have you filed a lawsuit in
6 connection with this case?

7 A No, I have not.

8 Q Why did you reach out to attorneys about what
9 happened with the defendant?

10 A I was having some really bad issues with my mental
11 health, and I guess just trying to survive and function in
12 that environment, after everything that had happened to
13 me, and I was asking to go to a compound that had mental
14 health services to accommodate people that had the needs
15 that I had. Because of timing and the fact that my time
16 was so short, they were indicating that they really -- was
17 not -- they weren't willing to transfer me into a trauma
18 program even though they had documented that I had severe
19 PTSD.

20 So I felt like the only way that I would
21 probably get some relief or some assistance was to get an
22 organization involved that helped me who were LGBT or to
23 get an organization involved that people help that had
24 mental health issues. So, you know, for me, I had
25 communicated with them I need some help. I need to go

Brandon Lemagne - Redirect

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1 somewhere else. You guys don't have the staff here. I
2 can't get up some mornings, and I really needed some help,
3 and I didn't feel like anybody was listening to me. I
4 don't feel like anybody cared. A lot of them didn't think
5 that anything had happened to me, and I was suffering, and
6 I needed some help.

7 So I reached out to every person that I could
8 possibly reach out to, whether that be an attorney that
9 had litigated a case similar to mine, whether that be an
10 organization, the ACLU, GLAD, Lambda Legal. I needed some
11 help, and nobody was helping me. I don't have a family
12 that's going to get on the phone and spend hours fighting
13 with these people. I didn't have any assistance with
14 this. I was kind of out there on my own trying to deal
15 with everything that had happened to me.

16 So I was on my own, and I was reaching out to
17 anybody that could possibly help me. I wasn't making a
18 secret about it. I had already been told that they were
19 monitoring my mail and my e-mail, and I didn't have
20 anything to hide.

21 Q Mr. Lemagne, are you able to -- given that you feel
22 that you're not getting adequate mental health assistance,
23 do you feel able to talk to other inmates for some support
24 about what you've been through?

25 A No. Absolutely not. A lot of -- the culture in

Brandon Lemagne - Redirect

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1 prison is if you say something like this about an officer,
2 that's going to be viewed as snitching. If you say
3 something -- if you -- you -- even if it's a cop, it
4 doesn't matter, especially when you're talking about a cop
5 that is kind of cool with other inmates and a cop that's
6 viewed as the cool officer. If you say something like
7 that, oh, you told. We're going to beat you up. You've
8 got to go up top. Go ahead and check in. You've got to
9 go to the hole. Me discussing something like this with
10 inmates would have been horrible for me.

11 So it wasn't something that I can discuss. It
12 wasn't something that I could seek support for. It was
13 something that I had to deal with within myself. The
14 people that were designated to discuss this with me, the
15 psychology staff, were not willing to assist me, which is
16 my reason for reaching out.

17 MS. GILBERT: Thank you for your testimony,
18 Mr. Lemagne. No further questions.

19 THE COURT: All right. Folks, I think this is a
20 perfect time for us to take our morning recess. So what
21 we're going to do is we're going to recess until 11:15.
22 I'll give you a couple extra minutes there this morning.

23 All rise for the jury.

24 (The jury exited the courtroom.)

25 THE COURT: All right. You can take

Johnny Lavender - Direct

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1 Mr. Lemagne.

2 (Witness stood aside.)

3 (Recess from 10:58 a.m. until 11:17 a.m.)

4 THE COURT: All right. Do you want to bring the
5 jury in?

6 All right. All rise for the jury. Thank you.

7 At least somebody remembered.

8 (The jury entered the courtroom.)

9 THE COURT: All right. Everybody can have a
10 seat.

11 Everybody doing okay over there?

12 All right. Do you want to call your next
13 witness?

14 MR. GARNETT: Your Honor, the United States
15 would call FBI Special Agent Johnny Lavender.

16 **JOHNNY LAVENDER,**

17 called by the government, first being duly sworn,

18 testified as follows:

19 THE COURT: Whenever you're ready, Mr. Garnett.

20 THE WITNESS: Thank you.

21 CSO SPIVEY: Yes, sir.

22 **DIRECT EXAMINATION**

23 BY MR. GARNETT:

24 Q Good morning, Agent Lavender.

25 A Good morning.

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1 Q Would you please introduce yourself to the jury and
2 spell your first and last name for the court reporter?

3 A Johnny, J-O-H-N-N-Y. Lavender, L-A-V-E-N-D-E-R. And
4 I'm a special agent with the FBI here in the Richmond
5 field office.

6 Q How long have you been with the FBI?

7 A In June, it will be 18 years.

8 Q What kind of cases do you typically work at present?

9 A Currently, human trafficking, crimes against
10 children, civil rights cases which incorporates color of
11 law cases.

12 Q Were you involved in the investigation of this
13 particular case?

14 A Yes.

15 Q And as an FBI agent, are you familiar with the
16 process of collecting DNA samples?

17 A I am.

18 Q And does DNA sample collection often involve the
19 collection of what are known as buccal samples?

20 A Yes.

21 Q What's a buccal sample?

22 A It's a swab that is very similar to a Q-tip,
23 approximately 6 inches in length, with a soft end that we
24 use to collect data, DNA data.

25 Q And can you tell the jury just generally, how you

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1 collect a buccal sample?

2 A When you're collecting a buccal sample, it comes in a
3 kit. I take the kit with me to wherever I'm going to
4 collect the evidence. I open it. I put on gloves. I
5 take out two swabs. Again, they look like oversized
6 Q-tips.

7 I will go to the person that I'm collecting the
8 evidence from. I will insert the swab into their mouth.
9 I will gently rub on the inside of a cheek. You rub up or
10 down or twirl. And after you finish with the first swab,
11 then you grab the second swab, and insert that into the
12 person's mouth and do the other cheek, same procedure.

13 Q Do you seal those swabs up after they are taken?

14 A After I've completed taking the two swabs, I put them
15 into a small cardboard box that comes with the kit. I
16 close it up, and then I take a label that comes with the
17 kit, and I place it on top of the box. I write my name,
18 my initials, date and where the sample was taken from.

19 Q And once you've collected and labeled that sample,
20 does the FBI transport those samples to the FBI Laboratory
21 in Quantico, Virginia?

22 A I take it to our office here in Virginia. I enter
23 the information into the FBI computer system. Then I
24 provide those samples to our evidence technician, and then
25 I do an electronic communication requesting that those

Johnny Lavender - Direct

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1 samples be submitted to the FBI Laboratory by the FBI
2 technician.

3 Q During this investigation, did you collect a buccal
4 sample from an individual named Ronzell Jackson?

5 A Yes, I did.

6 Q Did you understand Ronzell Jackson to be Brandon
7 Lemagne's cellmate?

8 A Yes.

9 Q How did you collect -- I should say where did you
10 collect the buccal sample from Mr. Jackson?

11 A At FCI Petersburg Medium.

12 Q And did you follow the procedures that you mentioned
13 earlier in collecting that buccal sample?

14 A I did.

15 Q And was that sample eventually delivered to the FBI
16 Laboratory for testing?

17 A It was.

18 MR. GARNETT: Your Honor, if I could have
19 Officer Spivey show Special Agent Lavender what's been
20 marked as Government's Exhibit 18?

21 THE COURT: Any objection to Exhibit 18?

22 MR. GAVIN: No, sir.

23 THE COURT: All right. It will be admitted.

24 (Government Exhibit Number 18 was admitted.)

25 BY MR. GARNETT:

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1 Q You can go ahead and open that up, Agent Lavender.

2 Do you recognize what you're holding there?

3 A I do.

4 Q What is that?

5 A It's the swab kit that I used to take the DNA from
6 Ronzell Jackson.

7 MR. GARNETT: Your Honor, I think Your Honor
8 just admitted it, but I would move at this point if -- I
9 think it was just admitted.

10 THE COURT: All right. I'll double/triple admit
11 it.

12 MR. GARNETT: Thank you, Your Honor. I
13 appreciate that. All right.

14 BY MR. GARNETT:

15 Q Agent Lavender, you can go ahead and set that aside.
16 Did this investigation, did you also, on June 5th of 2018,
17 collect a DNA sample from the defendant, Chikosi Legins?

18 A I did.

19 Q And did you follow the procedures you described
20 earlier in taking that sample?

21 A I did.

22 MR. GARNETT: Your Honor, I'd ask to show the
23 government -- I'm sorry.

24 MR. GAVIN: Admitted. No objection.

25 MR. GARNETT: -- Agent Lavender Government

Johnny Lavender - Direct

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1 Exhibit 19.

2 THE COURT: See, they's working so quickly,
3 they're agreeing to stuff before I even get a chance to
4 rule on it. So Exhibit 19 will be admitted as well.

5 MR. GARNETT: Thank you, Your Honor.

6 (Government Exhibit Number 19 was admitted.)

7 BY MR. GARNETT:

8 Q Do you recognize that item there, Agent Lavender?

9 A Yes, I do.

10 Q And what is that?

11 A It's the swab kit that I used to take DNA from
12 Mr. Legins.

13 MR. GAVIN: And, Your Honor, I'd just note --
14 it's already been read into the record. Just that the
15 joint stipulations, paragraph 1 regarding the physical
16 evidence chain of custody, paragraph 2 relating to
17 DNA/chain of custody. Both have been entered and both
18 capture these two exhibits.

19 THE COURT: In a nutshell, Mr. Gavin, you're not
20 challenging that any of these swabs were contaminated in
21 an fashion; is that right?

22 MR. GAVIN: No, sir, I'm not. No objection.

23 THE COURT: All right. That's fine.

24 MR. GARNETT: Your Honor, that's all the
25 questions I have for Agent Lavender. We would plan to

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1 recall him later this afternoon.

2 THE COURT: That's fine.

3 MR. GARNETT: Thank you, Your Honor.

4 THE COURT: Do you have any questions about
5 this?

6 MR. GAVIN: No cross.

7 THE COURT: All right. Agent, you can step
8 down. Thank you for your testimony. Again, don't talk
9 about your testimony with anybody.

10 (Witness stood aside.)

11 THE COURT: Do you want to call your next
12 witness?

13 MR. GARNETT: The government would call
14 Lieutenant Steven Arrant, Your Honor.

15 **STEVEN ARRANT,**

16 called by the government, first being duly sworn,
17 testified as follows:

18 THE COURT: Go ahead, Mr. Garnett.

19 MR. GARNETT: Thank you, Your Honor.

20 **DIRECT EXAMINATION**

21 BY MR. GARNETT:

22 Q Lieutenant, could you please introduce yourself to
23 the jury and spell your first and last names for the court
24 reporter?

25 A I am Lieutenant Steven Arrant. First name

Steven Arrant - Direct

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1 S-T-E-V-E-N. Arrant, A-R-R-A-N-T.

2 Q And how are you currently employed, Lieutenant?

3 A I'm a supervisor at FCC Petersburg for the Bureau of
4 Prisons.

5 Q And how long have you been with the Bureau of Prisons
6 there at Petersburg?

7 A At Petersburg, it will be four years in April.

8 Q I'm sorry. Say again.

9 A Four years in April here in Petersburg.

10 Q And what did you do -- were you with the BOP before
11 coming to Petersburg?

12 A Yes. Ten years at FCI Sheridan in Oregon.

13 Q And prior to those ten years at Sheridan, what kind
14 of employment did you have?

15 A I was a county deputy primarily in the jail in Coos
16 County, Oregon.

17 Q And your duties now at FCI Petersburg -- I identified
18 you as a lieutenant, but what are your duties at FCI
19 Petersburg?

20 A A lot of duties. Mainly, I work off shifts when the
21 administration staff are not there. So I'm responsible
22 for a little bit more. Generally, the movement of the
23 inmates, the programming, the feeding, the recreation, any
24 emergencies that may arise.

25 Q Are you familiar -- or I should say prior to

Steven Arrant - Direct

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1 May 10th, 2018, were you familiar with an inmate named
2 Brandon Lemagne?

3 A Yes, sir.

4 Q And did you have any major disciplinary issues with
5 Brandon Lemagne prior to May 10, 2018?

6 A No, sir.

7 Q Did you know him well?

8 A Not well. Just in passing.

9 Q Were you on duty at FCI Petersburg on the night of
10 May 10th, 2018?

11 A I believe I was, sir.

12 Q Do you recall what your assignment was that night?

13 A The medium operations lieutenant.

14 Q And what does that mean? What's the operations
15 lieutenant at FCI Petersburg do?

16 A The operations lieutenant oversees the activities of
17 the lieutenant, the separate departments, running the
18 programs, movements of the inmates, all the officers in
19 the housing units, special housing unit, any emergencies
20 that arise, anything that comes up out of the ordinary.

21 Q After working hours, is the warden off the grounds of
22 the prison?

23 A Usually, sir, yes.

24 Q For all intents and purposes, is the operations
25 lieutenant in charge of the prison at that point?

Steven Arrant - Direct

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1 A The operations lieutenant, when the warden or
2 associate warden is not there, is the warden until they
3 arrive back, if needed.

4 Q So back to May 19th, at some point that evening were
5 you approached by Brandon Lemagne?

6 A Yes, sir.

7 Q And do you recall what you were doing at that time?

8 A I was sitting at my desk in my office. I believe I
9 was on the phone speaking with somebody. I can't remember
10 what the conversation was. It wasn't anything important.

11 Q And how did Brandon Lemagne introduce himself?

12 A Well, normally before someone comes in the office,
13 they'll knock and wait to be told to come in. He just
14 came in and walked up to my desk, looked straight in my
15 face and stated, "Your officer raped me."

16 Q And do you recall what his demeanor was at this
17 point?

18 A It was strangely kind of no demeanor. Just kind
19 of -- kind of blank.

20 Q When Brandon Lemagne told you that -- I'm sorry. Can
21 you say again what Brandon Lemagne told you?

22 A Say again, sir.

23 Q Can you say again what Brandon Lemagne told you?

24 A He came straight to my -- about four feet in front of
25 my desk, looked at me and stated that my officer had raped

Steven Arrant - Direct

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1 him.

2 Q Did you ask him who had raped him?

3 A Yes. At first, it kind of took me by surprise, and
4 it took me a second to soak that in, and I asked him who
5 had raped him.

6 Q And did he tell you?

7 A He said -- he didn't state a name at that time. He
8 explained the officer that was in the unit and gave a
9 general description of him.

10 Q Did he say what unit he had been in?

11 A I believe it was Fox South.

12 Q Did Brandon Lemagne specify a location within
13 Fox South?

14 A He said in the middle.

15 Q And what's in the middle of Fox South housing unit?

16 A The way the units are broke up between the north and
17 south sides, in between connecting them is a hallway with
18 elevator and a doorway going into the unit team office
19 areas, bathroom, secretary, unit manager, case manager
20 office.

21 Q During the day, is that area staffed by personnel,
22 then?

23 A During the day during the week it is. On off-shift
24 hours, it's usually nobody there.

25 Q Are there any cameras located in the unit team area?

Steven Arrant - Direct

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1 A I believe out in the unit showing the entrance doors
2 to the hallway is it. I don't believe there's one in the
3 unit team area.

4 Q So if someone were to enter the unit team area, once
5 those doors closed, would they be visible on a
6 surveillance camera?

7 A I don't believe so, no, sir.

8 Q Okay. Do you recall exactly or approximately what
9 time Brandon Lemagne entered your office?

10 A No, sir. It was mid evening.

11 Q Would the unit team area have been empty of personnel
12 at that point?

13 A Normally, unless somebody was working late. And I
14 don't think anybody was working late that night.

15 Q So as the operations lieutenant, was there a good
16 reason that you were aware of for an officer to have an
17 inmate in the unit team area in that locked cameraless
18 corridor?

19 A Absolutely no reason, sir.

20 Q Would that be concerning to you as the operations
21 lieutenant?

22 A A little. If he was transferring one inmate from one
23 side to the other, that would be normal. Going into the
24 center office areas, there's no reason for the inmate to
25 go in there.

Steven Arrant - Direct

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1 Q Would it be even more concerning if that correctional
2 officer was the only officer assigned to monitor a housing
3 bay full of inmates?

4 A That would include that he would have to abandon his
5 post and abandon his unit to go in there with another
6 inmate.

7 Q So at this point Brandon Lemagne -- Inmate Brandon
8 Lemagne has entered your office. He's told you what just
9 happened. Is it fair to say that at this point,
10 Lieutenant Arrant, your inclination was to hope that he
11 was not telling the truth?

12 A Absolutely.

13 Q And after Brandon Lemagne -- and why is that?

14 A You -- you would hope that none of the staff that you
15 worked with or your subordinates would do something like
16 that. And typically, inmates manipulate and make
17 accusations. So it's not unheard of to hear something
18 like that, but you never want it to be true.

19 Q So once Brandon Lemagne made that statement, did you
20 begin any protocols at that point?

21 A Yes, sir. We began -- I safeguarded the inmate,
22 started our PREA, Prison Rape Elimination Act protocols,
23 safeguarded the inmate.

24 Q If I could stop right there, Lieutenant. You
25 mentioned PREA, the Prison Rape Elimination Act. Can you

Steven Arrant - Direct

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1 briefly describe what kind of protocols are involved in
2 that process?

3 A As far as when an inmate makes an allegation, whether
4 staff or another inmate, our first thing that we do is
5 safeguard the inmate. We're going to separate the inmate
6 from who he says the assailant is. We're not going to
7 leave that inmate alone. We're going to escort him to
8 medical to have a medical assessment done on them.

9 And if there's -- if it's needed, he'll be sent
10 to the contract hospital that we send to to collect
11 evidence. We will make notification. Psychology will
12 come in and speak with the inmate. They'll allow the
13 inmate to receive a phone call from a -- I believe a
14 victim counselor of some kind. I can't remember the name
15 of it, and we go from there.

16 And the investigation gets -- the inmate will be
17 usually interviewed -- usually by our SI staff or somebody
18 appointed by the PREA coordinator to do that, because the
19 operational lieutenant still has an institution to run.
20 This is important. It needs to be done. So usually
21 another lieutenant will come in and do the interview.

22 Q And did you follow those protocol steps in this case?

23 A Yes, sir.

24 Q Okay. Did you arrange for Brandon Lemagne to be
25 separated from the officer who he said had raped him?

Steven Arrant - Direct

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1 A Yes, I did.

2 Q Did you arrange for an on-call psychologist to
3 interview Brandon Lemagne?

4 A I did. I called the on-call psychologist. And I
5 can't remember what her name was, but I know she came in
6 and spoke with the inmate.

7 Q Did you also arrange for Lieutenant McWilliams to
8 interview Brandon Lemagne?

9 A I called our special investigation service
10 supervisor, Mr. Norman, who called Lieutenant McWilliams
11 to come in and do it.

12 Q So is it fair to say that on FCI Petersburg at this
13 moment there's been sort of a flurry activity?

14 A Yes, sir.

15 Q Do you recall, though, in the midst of this activity
16 whether Officer Chikosi Legins began expressing an
17 interest in Brandon Lemagne's whereabouts?

18 A I received a couple phone calls and overheard quite a
19 few radio calls to medical from Officer Legins trying to
20 track down this inmate.

21 Q Are you familiar with Officer Legins?

22 A Yes, sir.

23 Q Okay. You worked with him for how long?

24 A A couple of years.

25 Q Do you see him here in the courtroom today?

Steven Arrant - Direct

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1 A Yes, I do.

2 Q Could you please identify him by something he's
3 wearing and where he's seated?

4 A He's the tall gentleman with the dark suit.

5 MR. GARNETT: Your Honor, I'd ask the record
6 reflect that Lieutenant Arrant has identified the
7 defendant.

8 THE COURT: So noted.

9 BY MR. GARNETT:

10 Q So you said you heard calls from the defendant to the
11 medical office; is that right?

12 A Yes, sir.

13 Q Okay. And could you hear what the defendant was
14 saying in terms of why he needed to contact the medical
15 department?

16 A He was trying to locate, I believe, Inmate Lemagne.

17 Q To your knowledge, was Inmate Lemagne assigned to
18 Officer Legins' area of responsibility that night?

19 A He was not, sir.

20 Q At some point did the defendant call your office, the
21 lieutenant's office?

22 A Yes, sir, he did.

23 Q Okay. And what did he ask you about or what did he
24 discuss with you?

25 A He asked if Lieutenant(sic) Lemagne was in medical.

Steven Arrant - Direct

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1 Q Did this strike you as concerning?

2 A It striked me as odd.

3 Q Okay. Would there be any reason for a housing unit
4 officer to inquire as to the location of an inmate not
5 assigned to their housing unit?

6 A If he had a program or a call-out or something where
7 he was supposed to, for some reason, go to another unit or
8 another area. But that wasn't the case that night.

9 Q Did you tell the defendant where Brandon Lemagne was?

10 A No, sir. I just told him that -- that the inmate --
11 that --

12 Q Do you recall --

13 A I think -- I believe I told him I hadn't seen Inmate
14 Lemagne.

15 Q At any point in this call did the defendant ask you
16 if you could give him an aspirin for a headache?

17 A I don't remember that, sir.

18 Q Did he make any complaint of any kind of medical
19 issue that would need medical treatment?

20 A Not at all, sir.

21 Q Did you hear the defendant call medical again after
22 you had spoken to him?

23 A Yes, sir.

24 Q Now, you said that the defendant asked -- the
25 defendant was calling medical, correct?

Steven Arrant - Direct

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1 A Yes, sir.

2 Q Is it fair to say that correctional -- I should ask
3 you. Are correctional officers trained in the PREA
4 protocols just as lieutenants are?

5 A Yes, sir, very well trained in it.

6 Q So is it fair to say that correctional officers would
7 know that a standard part of the PREA protocol would be a
8 trip to medical?

9 A Yes, sir. Every staff member is taught that this
10 first step is to safeguard separate -- separate and
11 safeguard the victim, alleged victim, and that they will
12 be taken to the lieutenant's office, who will get them to
13 medical for an assessment.

14 Q So in speaking to the defendant, Officer Legins, on
15 the phone that evening and listening to his repeated calls
16 to the medical department, was it your impression that the
17 defendant was generally concerned about Inmate Brandon
18 Lemagne's physical well-being?

19 A I didn't get that impression, sir. I just got the
20 impression that it was strange that after the inmate told
21 me what he told me, the officer would be trying so hard to
22 find out where this inmate was.

23 Q And earlier in your testimony here today, Lieutenant,
24 you said that your initial reaction had been to hope that
25 Brandon Lemagne was not telling the truth; is that right?

Steven Arrant - Cross

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1 A That's correct, sir.

2 Q By the end of the evening, had you come to a
3 different assessment of the situation?

4 THE COURT: I'm going to sustain that.

5 MR. GAVIN: Objection to the relevance.

6 THE COURT: That's totally inappropriate.

7 Move on.

8 MR. GARNETT: Yes, Your Honor.

9 Your Honor, I have no further questions for
10 Lieutenant Arrant.

11 THE COURT: All right. Go ahead, Mr. Gavin.

12 **CROSS-EXAMINATION**

13 BY MR. GAVIN:

14 Q Good morning, Lieutenant.

15 A Good morning, sir.

16 Q Do you remember testifying in front of the grand
17 jury?

18 A Yes, sir.

19 Q And was your testimony before the grand jury under
20 oath?

21 A Yes, sir.

22 Q Do you remember being placed under oath?

23 A Yes, sir.

24 Q Do you remember being asked the question: "Okay.
25 Did you know Inmate Lemagne prior to this incident"?

Steven Arrant - Cross

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1 A I don't really remember that question, sir. I'm sure
2 it was asked, though.

3 Q Do you remember making this statement: "I didn't
4 know him well, but he had become a little bit more --
5 needed a little bit more guidance and correction"?

6 A There's a lot of inmates like that, sir.

7 Q Well, you indicated earlier in your testimony you'd
8 never had any problems with him.

9 A No, sir. I said I never had any major disciplinary
10 problems with him.

11 Q So what did you mean in here about "he had become a
12 little more -- needing a little bit more guidance and
13 correction"?

14 A Well, sir, some of the inmates sometimes require --
15 they want a little bit more attention so they'll do
16 something to get an extra pat-down or just a little
17 attention from somebody that's not another inmate.

18 Q Do you remember also being asked the question whether
19 or not you had made any observations about Mr. Lemagne's
20 appearance?

21 A Mr. Lemagne, like most of the transgenders that I've
22 had experience with, tend to alter their issued clothing
23 to be tighter than the policies allow.

24 Q Do you remember answering the question you can't
25 really remember what he was wearing?

Steven Arrant - Redirect

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1 A I'm not sure, because sometimes he alters his issued
2 clothing. Sometimes he would alter his commissary
3 purchased clothing.

4 Q So do you agree that you testified that you couldn't
5 remember what he was wearing, but you could testify to
6 what you remember as to his demeanor?

7 A His demeanor was -- he was kind of blank.

8 Q You testified about different facility items,
9 including cameras. Are there cameras outside the compound
10 office that monitor entrance and exit to the compound
11 office?

12 A There's one that shows the compound yard. I'm not
13 sure if it actually shows the compound door or not.

14 Q But there is specifically a camera that shows the
15 compound yard?

16 A Yes. It shows a great distance from close to very
17 far out.

18 MR. GAVIN: No other questions.

19 THE COURT: Any redirect?

20 MR. GARNETT: Very briefly, Your Honor.

21 **REDIRECT EXAMINATION**

22 BY MR. GARNETT:

23 Q Lieutenant Arrant, is it fair to say that your
24 understanding of the disciplinary issues that Brandon
25 Lemagne had was limited to clothing wear issues?

Kara Gregor - Direct

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1 A They were minor, sir. Yes.

2 MR. GARNETT: That's all I have, Your Honor.

3 Thank you, Lieutenant Arrant.

4 THE COURT: All right. Lieutenant, thank you
5 for your testimony. You can step down. I'm going to
6 instruct you not to talk about your testimony with anybody
7 until the trial is over. Okay? Thank you.

8 THE WITNESS: Thank you, sir.

9 (Witness stood aside.)

10 THE COURT: Do you want to call your next
11 witness?

12 MR. GARNETT: Yes, Your Honor. The
13 United States would call Kara Gregor.

14 **KARA GREGOR,**

15 called by the government, first being duly sworn,
16 testified as follows:

17 THE COURT: All right, Mr. Garnett.

18 MR. GARNETT: Thank you, Your Honor.

19 **DIRECT EXAMINATION**

20 BY MR. GARNETT:

21 Q Good morning, Ms. Gregor.

22 A Good morning.

23 Q Could you please introduce yourself to the jury and
24 spell your first and last name for the court reporter?

25 A Yes. My name is Kara Gregor. My first name is

Kara Gregor - Direct

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1 spelled K-A-R-A, and my last name is spelled G-R-E-G-O-R.

2 Q Ms. Gregor, how are you employed?

3 A I'm employed by the FBI Laboratory located in
4 Quantico, Virginia, and I am a forensic examiner in the
5 DNA case work unit.

6 Q What are your responsibilities as a forensic examiner
7 in the DNA case work unit?

8 A As a forensic examiner in the DNA case work unit, it
9 is my job to manage a case when we receive it at the FBI
10 Laboratory. And I will review the incoming paperwork that
11 is received and use that incoming paperwork to determine
12 what items to test and which tests to perform on those
13 items.

14 I then direct a team of biologists, who will
15 perform those tests in the laboratory. And once their lab
16 work is complete, I will review the results. I will then
17 interpret the data and write a report that outlines my
18 findings and conclusions and then sometimes testify in
19 court to those conclusions.

20 Q And how long have you been working for the FBI?

21 A I've been working for the FBI Laboratory since April
22 of 2016. So it will be four years this April.

23 Q And to become a forensic examiner for the FBI,
24 Ms. Gregor, did you have any specialized training?

25 A Yes. I had an extensive training program at the FBI

Kara Gregor - Direct

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1 Laboratory that lasted approximately 27 months. So that
2 was a little bit over two years. And my training
3 consisted of learning the serology, DNA interpretation,
4 population genetics and statistics. I also took a written
5 practical and oral exercises in those areas. I also was
6 performing case work under a qualified examiner and also
7 participated in moot court exercises. And at the end of
8 my training program, I took a competency test. And this
9 test is similar to a final examination to -- so it could
10 show that I could perform case work independently.

11 Q How were you employed before coming to the FBI?

12 A Prior to the FBI, I worked at Bode Cellmark Forensics
13 in Lorton, Virginia, and I was there very briefly. And
14 then prior to Bode Cellmark Forensics, I worked at the
15 Massachusetts State Police crime laboratory for
16 approximately six years, and I was employed in their DNA
17 unit as well as their crime scene response unit.

18 Q Was your employment in the crime scene response unit
19 there, was that helpful for your current -- was that
20 helpful experience to garner for your current position?

21 A Yes. So my job duties in the crime scene response
22 unit involved going to crime scenes and performing testing
23 out in the field, along with collecting evidence and
24 bringing it back to the laboratory to be tested. And it
25 taught me the different types of items that could be

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1 collected and where to swab on those items.

2 So, for example, if I was to collect a cup from
3 a crime scene, I would want to swab the rim and mouth of
4 that cup for DNA.

5 Q And what's your educational background.

6 A I have a bachelor of science degree in biochemistry
7 and molecular biology from the University of
8 Massachusetts, with a minor in chemistry.

9 Q Have you testified as an expert witness in the field
10 of DNA analysis before?

11 MR. GAVIN: Judge, I'm not challenging her
12 qualifications.

13 THE COURT: All right. Then she'll be -- she's
14 testifying as an expert in her area regarding DNA. So as
15 an expert, she's going to be able to give you her own
16 opinion of certain things that she has analyzed, unlike a
17 normal witness. So expert witnesses are treated a little
18 bit differently than standard witnesses.

19 At the end of the case, I'm going to give you
20 some specific instructions about this, but you'll see that
21 we're going to treat her a little bit differently because
22 she's going to be able to give some opinions now. Okay?

23 And she's an expert in what are you offering her
24 as?

25 MR. GARNETT: DNA analysis, Your Honor.

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1 THE COURT: All right. She's accepted, then, as
2 an expert in DNA analysis.

3 MR. GARNETT: Thank you, Your Honor.

4 BY MR. GARNETT:

5 Q Ms. Gregor, you mentioned earlier when you were
6 talking through your training there was something called
7 serology. What is forensic serology?

8 A So serology is the characterization and
9 identification of bodily fluids on items of evidence.

10 Q And what kind of bodily fluids might you expect to
11 find on evidence?

12 A Some bodily fluids that we could find on evidence or
13 what we test for at the FBI Laboratory is for blood and/or
14 semen.

15 Q How does the FBI Laboratory perform serological
16 testing?

17 A So we have two types of tests that we perform for
18 serological testing. The first test is called a
19 presumptive test. And this is a color changing test.
20 It's a quick color changing test where we would swab the
21 item of evidence and see if it changes into a pink to
22 purple color. And this is where if it's a positive
23 result, then semen and/or blood is indicated on that item.

24 We also have a second test that we perform
25 called a confirmatory test, and this is where we're able

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1 to identify blood and/or sperm on an item.

2 Q And when you're conducting that confirmatory test,
3 what are you looking for to confirm the presence of semen?

4 A For the confirmatory test of semen, we're looking
5 under a microscope for the presence of sperm cells.

6 Q And if you're unable to identify the presence of
7 sperm cells, does that conclusively determine, then, that
8 the substance at issue is not semen?

9 A If we're not able to identify sperm cells, that
10 doesn't mean that sperm cells isn't on that item. It's
11 just that it's below the detection level of our test.

12 Q If an individual were to have low sperm count, for
13 instance, would that lower the possibility that a
14 confirmatory test would find the presence of sperm cells?

15 A Yes. That could affect it, yes.

16 Q What are typical reasons for a low sperm count?

17 A One reason for a low sperm count would be radiation
18 or chemotherapy of an individual.

19 Q So this will form a lot of your testimony,
20 Ms. Gregor. What is DNA?

21 A So DNA stands for deoxyribonucleic acid, and it's the
22 fundamental building blocks of all living organisms. And
23 it contains all the information for things you can see,
24 such as whether a person has blond hair or brown hair,
25 blue eyes or brown eyes, and whether a person is tall or

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1 short.

2 Q Where would you find DNA in the human body, I should
3 say?

4 A So DNA is found in cells of the body. And if you
5 were to think of an egg as a cell, the yolk of that egg
6 would be a nucleus, and that is where the DNA is found.

7 Q Is there DNA present in individuals' hair?

8 A Some sources of DNA include hair, but also semen,
9 blood, saliva.

10 Q And is DNA unique to each particular individual?

11 A A person's DNA profile is unique to every individual
12 with the exception of identical twins.

13 Q So when you're looking at DNA, how do you determine
14 between particular individuals? How do you tell who's DNA
15 belongs to which person?

16 A So what I look at in the DNA is what is called short
17 tandem repeats, or STRs, and this is what is differing
18 from individual to individual, with the exception of
19 identical twins. And these are just pieces of DNA that
20 are repeated over and over again.

21 Q And how is DNA testing performed, very generally, at
22 the FBI Laboratory in Quantico?

23 A So for the DNA testing process, we have a five-step
24 process. The first step is called collections, and this
25 is where we will take a cutting from an item of evidence

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1 or a swabbing, which is similar to a Q-tip, and rub it on
2 an item of evidence. And we will put the swabbing or
3 cutting into a tube.

4 The second step of the process is called
5 extraction. And what we do is we will add chemicals to
6 that tube that contains the evidence to break up those
7 cells to release the DNA.

8 The third step of the process is called
9 quantitation, and quantitation is where we're trying to
10 estimate how much total human DNA we have, but also how
11 much male DNA we have in the sample.

12 From there, the fourth step of the process is
13 called amplification, and this is where we're taking that
14 DNA and making millions and millions of copies of those
15 short tandem repeats that I mentioned earlier that differ
16 from individual to individual and making millions of
17 copies of those. So it's similar to a Xerox machine.

18 And the last step of the process is separation
19 and detection, and this is where we take those amplified
20 pieces of DNA and we put it on an instrument, and then
21 we'll separate the DNA by its size. And based on the size
22 or the length of those DNA pieces, it is given a number,
23 and those numbers make up the DNA profile.

24 Q Is the DNA profile unique, again, to each particular
25 individual?

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1 A Yes. Again, it's unique to every individual with the
2 exception of identical twins.

3 Q As a forensic examiner working at the FBI working
4 criminal cases, are you often provided with DNA samples of
5 known individuals?

6 A Yes. So we can receive a known DNA profile, and what
7 that is is either a buccal sample, which is a swabbing or
8 Q-tip from the inside of a person's cheek, and we can also
9 receive a blood sample from an individual, and that will
10 be the known DNA profile that we use for comparisons.

11 Q And what's the point of collecting those known DNA
12 samples to use in your testing?

13 A So we want the known DNA samples collected and sent
14 to the laboratory so we can perform comparisons to the
15 questioned DNA samples that we have in a case.

16 Q So when you generate a DNA profile from testing the
17 DNA samples provided to you and you compare that DNA
18 profile to your known DNA profiles, what are the possible
19 results the laboratory will reach?

20 A Well, there are two main conclusions that we have.
21 So if the numbers or the DNA profile from the known
22 individual is consistent with the questioned DNA profile,
23 then that means the person could have been a contributor
24 and is either included or it's a match.

25 And the second possibility is that the numbers

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1 or the DNA profiles are different between the known DNA
2 profile and the questioned sample, and that is when the
3 person of interest could not have been a contributor to
4 the DNA evidence profile.

5 Q So focusing on that first category, the inclusion,
6 the match I think you called it. How do you determine,
7 once you've got an inclusion, how strong that match is?

8 A So we calculate a statistic to give weight to the
9 evidence, and that statistic is called a likelihood ratio,
10 or LR. And what that is is it's comparing the probability
11 of the evidence under two opposing scenarios. One of
12 those scenarios is if the person of interest is a
13 contributor to the DNA evidence profile, and the other
14 scenario is if an unknown, unrelated individual is a
15 contributor to the DNA evidence profile.

16 Q And is that likelihood ratio, is that a statistical
17 number?

18 A Yes. The likelihood ratio is a number, yes.

19 Q And does the FBI use a verbal scale to sort of
20 provide a word corollary to that quantitative number?

21 A Yes. So in addition to that likelihood ratio number,
22 we have a verbal scale. And what that verbal scale is is
23 it's a word equivalency, and it's just words to describe
24 or give meaning or context to what that likelihood ratio
25 number means.

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1 Q When you have a DNA sample -- or I should say when
2 you're testing DNA samples, is it possible to come across
3 samples of DNA profiles of more than one individual?

4 A Yes. So if there's a DNA profile from more than one
5 individual, then we call that a mixture profile, or a DNA
6 profile from more than one individual.

7 Q How many DNA profiles can be present in one sample
8 where the FBI Laboratory can still make a conclusion as to
9 which profiles are involved?

10 A At the FBI Laboratory, we can only interpret DNA
11 profiles or DNA mixtures up to four individuals.

12 Q How do you know, Ms. Gregor, that the results that
13 you get at the FBI Laboratory in Quantico are reliable?

14 A So I know that the results are reliable that I get
15 because we have an extensive quality system in place. So
16 we have biologists that perform the testing in the
17 laboratory, and they're taking extra precautions to
18 prevent contamination, such as wearing PPE, which is
19 personal protective equipment, such as face masks, gloves
20 and lab coats. They also open up one item at a time.

21 We also have a review process in place for all
22 of our case work where my file will undergo a technical
23 review, which is where another examiner will review my
24 file and see if they agree with my conclusions.

25 The second review is an administrative review

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1 where another examiner will look at my file for any
2 grammatical or spelling typos.

3 And we also are audited externally by another
4 agency where they review our standard operating
5 procedures, which are our step-by-step protocols, and it's
6 similar to following a recipe in a cookbook. And because
7 of all this, I know that the results are reliable.

8 Q Is the FBI Laboratory accredited?

9 A Yes. The FBI Laboratory is accredited by ANAB, which
10 stands for the American National Standards Institute,
11 National Accreditation Board.

12 Q And lastly, is your unit, the DNA case work unit, is
13 it held to any particular heightened standards?

14 A Yes. In addition to that, we are held to the QAS, or
15 the quality assurance standards, for DNA forensic testing
16 laboratories. And some of the requirements in this
17 document, we have to meet certain requirements for our
18 training and our background, but also, it tells us that we
19 have to take two proficiency tests per year.

20 Q So, Ms. Gregor, let's talk now about the DNA testing
21 you performed in this particular case. So you're here
22 testifying in the case of the *United States v. Chikosi*
23 *Legins*. Did you receive evidence pertaining to this case?

24 A Yes.

25 Q Did that evidence include swabs collected from a

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1 forensic exam?

2 A Yes.

3 Q Did it include a sweatshirt?

4 A Yes, it did.

5 Q Did it include other items of clothing, to include a
6 jock strap and shorts?

7 A Yes.

8 Q And did you test each of these categories of evidence
9 at different times?

10 A Yes.

11 Q Did you generate a report following each of those
12 tests with your conclusions as to the DNA testing
13 processes?

14 A Yes, I did.

15 Q Okay.

16 MR. GARNETT: Your Honor, at this point I would
17 go ahead and ask to -- we've already published again
18 stipulations 1 and 2, but I'd ask to read joint
19 stipulation 3 into evidence, Your Honor. It's in regards
20 to the testimony of biologist-forensic examiner Kara
21 Gregor.

22 THE COURT: That's fine.

23 MR. GARNETT: Thank you, Your Honor.

24 "The FBI Laboratory at Quantico, Virginia,
25 employs a DNA testing procedure that involves an

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1 assignment coordinator, who assigns a particular DNA
2 testing task; biologists, who prepare and process the DNA
3 samples; and an analyst, who completes the actual DNA
4 analysis and comparison. The analyst is involved and
5 directs the laboratory's DNA testing process and then
6 completes the analysis on the test results that the
7 process generates. The FBI analyst assigned to this
8 particular investigation, Forensic Examiner Kara R.
9 Gregor, is accordingly able to provide testimony as
10 regards both the FBI Laboratory's DNA testing process and
11 her subsequent analysis of the DNA testing results."

12 Thank you, Your Honor.

13 THE COURT: All right. Folks, it's just like
14 every other stipulation. You can accept that as proven.
15 Okay?

16 Go ahead, Mr. Garnett.

17 MR. GARNETT: Thank you, Your Honor.

18 BY MR. GARNETT:

19 Q Ms. Gregor, during this investigation, were you
20 provided with a DNA sample from the defendant in this
21 case, Chikosi Legins?

22 A Yes.

23 MR. GARNETT: And if I could go ahead,
24 Your Honor, and show the witness Government Exhibit 19?

25 THE COURT: Has that been admitted yet?

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1 MR. GARNETT: It has, Your Honor.

2 BY MR. GARNETT:

3 Q And you can reach inside there, Ms. Gregor. Do you
4 recognize that item, Ms. Gregor?

5 A Yes.

6 Q What is that?

7 A It is a buccal sample from Mr. Legins.

8 Q And is that the sample that you used to create a
9 known profile for the defendant, Chikosi Legins?

10 A Yes.

11 Q And you can set that aside, ma'am.

12 MR. GARNETT: And, Officer Spivey, could I ask
13 you to present the witness with what is Government
14 Exhibit 18. Thank you.

15 BY MR. GARNETT:

16 Q Do you recognize that item, Ms. Gregor?

17 A Yes.

18 Q What is that?

19 A This is a buccal sample from Mr. Jackson.

20 Q And did you use that buccal sample to create a known
21 profile for Ronzell Jackson?

22 A Yes.

23 Q So we're going to work in chronological order here,
24 Ms. Gregor. Did you complete a DNA laboratory report on
25 November 15th, 2018, that contains your findings or

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1 described your findings as to the first category of
2 evidence that you tested, which was a series of swabs?

3 A Yes.

4 Q All right.

5 MR. GARNETT: And, Your Honor, I'd ask to go
6 ahead and show the witness what's been marked as
7 Government Exhibit 15.

8 THE COURT: All right. Any objection from the
9 defense?

10 MR. GAVIN: No, sir.

11 THE COURT: All right. Do you want to introduce
12 it?

13 MR. GARNETT: I was going to create a little bit
14 more foundation, Your Honor, but we will eventually.

15 THE COURT: Well, he just said he doesn't object
16 to it. So is there any reason why I can't introduce it
17 now?

18 MR. GARNETT: I'd move Government Exhibit 15
19 into evidence.

20 THE COURT: It will be admitted. And then you
21 can ask whatever you want to ask.

22 MR. GARNETT: Thank you, Your Honor.

23 BY MR. GARNETT:

24 Q Ms. Gregor, I believe you have an identical copy of
25 Government Exhibit 15 in your binder; is that right?

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1 A Yes, I do.

2 MR. GARNETT: Your Honor, I'd ask the witness be
3 allowed to review that as opposed to --

4 THE COURT: Of course.

5 MR. GARNETT: Thank you.

6 BY MR. GARNETT:

7 Q You can open that up, Ms. Gregor, to your
8 November 15th, 2018, report.

9 MR. GARNETT: Your Honor, at this point I'd also
10 move to publish -- actually, it's already been published
11 as well. We'd just note, Judge, that the three reports
12 that Ms. Gregor will be testifying here to today,
13 Government's Exhibit 15, 16 and 17, were all noted in the
14 authenticity stipulation, paragraph 6 of the parties'
15 joint stipulations.

16 MR. GAVIN: That's correct.

17 THE COURT: Well, he's -- you're not objecting
18 to any of these coming in, right?

19 MR. GAVIN: No, sir.

20 THE COURT: So 15, 16 and 17, those reports will
21 be admitted.

22 MR. GARNETT: Thank you, Your Honor.

23 THE COURT: And now you can just ask her what
24 the reports mean.

25 MR. GARNETT: Thank you, Your Honor.

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1 THE COURT: Fifteen we have on the screen right
2 now for the folks, right?

3 MR. GARNETT: I believe we did do, Your Honor.

4 Okay.

5 THE COURT: All right. So why don't you ask her
6 what all this stuff means.

7 MR. GARNETT: Yes, Your Honor.

8 Your Honor, if I could go ahead and have the --
9 Officer Spivey, could you please present the witness with
10 Government Exhibit 4?

11 BY MR. GARNETT:

12 Q If you could just reach into that, Ms. Gregor --
13 thank you -- and pull that out. Do you recognize that
14 box, Ms. Gregor?

15 A Yes.

16 Q And what is that box?

17 A This is a sexual assault kit that was collected from
18 Mr. Lemagne.

19 Q Okay. And can you open that box up, please? Can you
20 confirm, Ms. Gregor, that box contains a series of small
21 envelopes marked as Government's Exhibit 4-A through 4-H?

22 A Yes.

23 Q Are these the items that you tested and that your
24 November 15th, 2018, report references?

25 A Yes.

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1 Q Can you turn specifically to Exhibit 4-H of those
2 envelopes, Ms. Gregor? What is Exhibit -- I'm sorry --
3 Government Exhibit 4-H, Ms. Gregor?

4 A This is the dried blood sample from Mr. Lemagne.

5 Q Did you use that dried blood sample as the known
6 profile sample for Brandon Lemagne?

7 A Yes.

8 Q So let's turn now, Ms. Gregor, to Government
9 Exhibit 4-C, that envelope. And what is that exhibit,
10 Ms. Gregor?

11 A This exhibit is the anorectal swabs collected from
12 Mr. Lemagne.

13 Q And in your report, did you mark that -- what we have
14 marked as Government Exhibit 4-C, is that item number 5 in
15 your November 15th report?

16 A Yes.

17 Q So let's talk specifically about that item,
18 Ms. Gregor. And you can set that aside, Ms. Gregor. I
19 know your desk is getting sort of crowded there.

20 Did you submit that anorectal swab -- or those
21 anorectal swabs to serological testing?

22 A Yes, I did.

23 Q Okay. What were the results?

24 A So the anorectal swabs was examined for the presence
25 of semen. However, none was detected.

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1 Q All right. Did you also submit that -- those
2 anorectal swabs for DNA testing?

3 A Yes.

4 Q Okay. And did you form a conclusion as to those
5 tests?

6 A Yes.

7 Q And before you start there, Ms. Gregor, is your
8 conclusion noted at the top of page 2 of your report?

9 A Yes.

10 MR. GARNETT: Ms. Taylor, if I could ask you
11 just to pull up page 2. I'm sorry. The bottom of that
12 report. If you could pull up the -- or blow up the bottom
13 portion of that screen there.

14 BY MR. GARNETT:

15 Q Thank you, Ms. Gregor. I cut you off there. But
16 could you please walk the jury through your conclusion as
17 to the anorectal swabs?

18 A Sure. So I examined the anorectal swabs for DNA
19 testing, and male DNA was obtained from this item. I then
20 interpreted the DNA profile as originating from two
21 individuals, one of whom is Mr. Lemagne.

22 I then compared Mr. Legins' DNA known profile to
23 this evidence sample, or profile, and determined that he
24 was included. And the DNA results from the anorectal
25 swabs are 29 sextillion times more likely if Mr. Lemagne

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1 and Mr. Legins are contributors than if Mr. Lemagne and an
2 unknown, unrelated person are contributors. And this
3 provides very strong support for inclusion that Mr. Legins
4 is a contributor to the DNA evidence profile obtained from
5 the anorectal swabs.

6 I then compared the known DNA profile from
7 Mr. Jackson to the evidence sample, and he was excluded as
8 a potential contributor to the anorectal swabs.

9 Q Okay.

10 MR. GARNETT: Ms. Taylor, if you could pull up
11 page 4 of that report.

12 THE COURT: Just so we're clear, so we know what
13 we're talking about, item 5 is the anorectal swab that was
14 taken from Brandon Lemagne?

15 THE WITNESS: Correct.

16 MR. GARNETT: And, Ms. Taylor, if you could blow
17 up what follows behind footnote 5 there, up to the top of
18 the screen there.

19 BY MR. GARNETT:

20 Q Ms. Gregor, you talked about that verbal scale. Is
21 this the verbal scale that you referenced earlier?

22 A Yes. So when we calculate a statistic and what that
23 likelihood ratio number is, we have a verbal scale, or a
24 word equivalency, to give context to what that likelihood
25 ratio number means.

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1 Q Is there a category of confidence the FBI uses that's
2 greater than very strong support for inclusion?

3 A No. The highest level that we have for our
4 inclusions is very strong support for inclusion, and that
5 is when the likelihood ratio number is greater than or
6 equal to 1 million.

7 Q And the number that you referenced, the likelihood
8 ratio was 29 sextillion; is that correct?

9 A Yes.

10 Q Are you aware of the approximate population of the
11 earth at present?

12 A We have approximately 7 billion people on -- or in
13 the world, yes.

14 Q And behind that 7 for 7 billion, how many zeros
15 follows?

16 A For 7 billion, it is 9 zeros.

17 Q So to go back to the number that you referenced in
18 your chart, 29 sextillion, how many zeros would fall after
19 the 29 there.

20 A So it would be 29, followed by 21 zeros.

21 Q Now, Ms. Gregor, in regards to the serological
22 testing that you noted you performed on item number 5,
23 those anorectal swabs, your report notes that you did not
24 detect any semen on the anorectal swabs; is that right?

25 A Correct.

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1 Q If an individual were to have ejaculated outside of
2 Brandon Lemagne, say catching semen in their hand, would
3 you expect to find any of that individual's semen on
4 anorectal swabs from Brandon Lemagne?

5 A I would not -- that would be my expectation, no.

6 Q So, Ms. Gregor, let's go ahead and turn to what's
7 marked as --

8 MR. GARNETT: If I could pull what's marked as
9 Government's Exhibit 16, Ms. Taylor.

10 BY MR. GARNETT:

11 Q If you look at the screen there, Ms. Gregor. I'll
12 let you turn to your report here in just a second. Do you
13 recognize this, what's on the screen there?

14 A Yes. This is a copy of the report that I made.

15 Q Okay. And what's the date of that report?

16 A The date is December 13th, 2018.

17 Q And do you have a corresponding copy of that report
18 in your binder there?

19 A Yes.

20 Q Okay. Please feel free to turn to that.

21 MR. GARNETT: And, Your Honor, I ask that we
22 provide -- I'm sorry.

23 Ms. Taylor, could you please pull up what's been
24 entered as Government's Exhibit 10-A?

25 BY MR. GARNETT:

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1 Q Ms. Gregor, this has already been entered into
2 evidence. It's a photograph of the contents of Government
3 Exhibit 10. Do you recognize the item depicted in this
4 photograph?

5 A Yes. This is the gray sweatshirt that was sent in
6 that we performed testing on.

7 Q And, Ms. Gregor, what item number did the FBI assign
8 this particular government exhibit?

9 A It was item number 20.

10 Q And when this item arrived at your laboratory up
11 there in Quantico, Ms. Gregor, did you submit this item to
12 black light testing?

13 A Yes. So part of our serological screening process,
14 we have what is called an alternate light source. And
15 this is similar to using a black light or a flashlight in
16 a dark room to see if there's any areas that will
17 fluoresce.

18 Q And what kind of items would fluoresce under a black
19 light, Ms. Gregor?

20 A So, for example, if there was semen or blood on an
21 item, those particular body fluids would fluoresce under
22 that light.

23 Q Did the black light testing you performed on item
24 number 20, the sweatshirt Brandon Lemagne was wearing, did
25 any of the items on that sweatshirt fluoresce? I'm sorry.

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1 Did any of the areas in that sweatshirt
2 fluoresce?

3 A Yes.

4 Q And how did you indicate -- or I should say did you
5 indicate the areas that had stains that fluoresced on that
6 sweatshirt?

7 A So the areas that fluoresced and gave results were
8 circled or outlined by the biologist in the laboratory,
9 and that line was the blue coloring.

10 MR. GARNETT: And, Ms. Taylor, if you could blow
11 up the left half of that sweatshirt as we see it on the
12 screen. Thank you, Ms. Taylor.

13 BY MR. GARNETT:

14 Q Ms. Gregor, as you're looking there at what's
15 decently large size enough, do you see any black circles
16 enclosed within the blue markings that the FBI Laboratory
17 put on there?

18 A Yes.

19 Q And what did you understand those black markings to
20 be, those black circles?

21 A I understood that these markings were performed or
22 done by Mr. Lemagne.

23 Q Is it important for you to know so you know which
24 areas to test as well?

25 A No. We will test the whole sweatshirt to examine to

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1 see if any other areas will fluoresce and if there's any
2 other staining.

3 Q So based on the black light results that you got on
4 this sweatshirt, Ms. Gregor, did the lab then conduct
5 serological testing on the sweatshirt?

6 A Yes.

7 Q Okay.

8 MR. GARNETT: And, Ms. Taylor, if you could go
9 back to Government Exhibit 16 now?

10 BY MR. GARNETT:

11 Q And what were the results of the serological testing
12 on that sweatshirt, Ms. Gregor?

13 A So the sweatshirt, we performed a chemical test for
14 the possible presence of semen, and that was positive on
15 the sweatshirt. However, the presence of semen was not
16 confirmed.

17 Q All right. Did you also conduct DNA testing on this
18 particular item?

19 A Yes.

20 Q Okay. And is that -- are your conclusions noted at
21 the top of page 2 of your report?

22 A Yes.

23 MR. GARNETT: Ms. Taylor, could you blow those
24 up for me, please, the very top of the screen?

25 BY MR. GARNETT:

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1 Q And what were your conclusions, Ms. Gregor, as to the
2 DNA testing results on that sweatshirt?

3 A So we took a swabbing from the stain on the outside
4 right sleeve and the inside cuff of that sweatshirt, and
5 male DNA was obtained from that item. I interpreted the
6 DNA profile as originating from three people, and I then
7 compared the known DNA profile from Mr. Lemagne and
8 determined that he was included. And the DNA results from
9 item 20, stain 1, are 78 octillion times more likely if
10 Mr. Lemagne and two unknown, unrelated people are
11 contributors than if three unknown, unrelated people are
12 contributors. So this provides very strong support for
13 inclusion of Mr. Lemagne as being a contributor to the DNA
14 evidence profile obtained from this item.

15 I then compared Mr. Legins' DNA known profile to
16 this sample and determined that he was also included. And
17 the DNA results from this item, or item 20, stain 1, are
18 66 quintillion times more likely if Mr. Legins and two
19 unknown, unrelated people are contributors than if three
20 unknown, unrelated people are contributors. And this
21 provides very strong support for inclusion of Mr. Legins
22 being a contributor to the DNA profile obtained from this
23 item.

24 Q All right, Ms. Gregor. So quintillion is a different
25 number than sextillion. How many zeros would follow the

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1 66 in 66 quintillion?

2 A For 66 quintillion, it's 66 followed by 18 zeros.

3 Q Let's move on, Ms. Gregor, now to Government

4 Exhibit 17. Did you eventually test additional evidence

5 in this case in the following year, in the spring of 2019?

6 A Yes.

7 Q And did you also prepare a report documenting your

8 conclusions as to that testing?

9 A Yes.

10 Q Okay. And looking at your screen there, do you

11 recognize what has been entered as Government Exhibit 17?

12 A Yes.

13 Q What is that?

14 A This is a copy of my report.

15 Q And you, again, have a corresponding copy of that

16 report in your binder?

17 A I do.

18 Q Please feel, again, free to reference that.

19 MR. GARNETT: Ms. Taylor, if I could show the

20 witness Government Exhibit 12-A.

21 And this has already been entered into evidence,

22 Your Honor.

23 BY MR. GARNETT:

24 Q Ms. Gregor, this photograph was entered into evidence

25 already, but it's a photograph of the contents of a bag of

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1 evidence. Do you recognize the items depicted in this
2 photograph?

3 A Yes. This photograph contains two of the items that
4 were -- that I tested for DNA.

5 Q Okay. And what items were those?

6 A It was the jock strap and also the shorts.

7 Q And what item numbers -- looking at your July 10th
8 report here, what item numbers did the FBI Laboratory
9 assign to those two items?

10 A So item number 21 was the jock strap, and item 22 was
11 the shorts from Mr. Lemagne.

12 MR. GARNETT: Your Honor, I'd just note at this
13 point that the stipulations note that the Government
14 Exhibit -- Government Exhibit 12 correlates to item number
15 21 in the FBI's numbering system, and Government
16 Exhibit 13 correlates to item number 22, the shorts.

17 MR. GAVIN: No objection.

18 THE COURT: Okay.

19 MR. GARNETT: Thank you, Your Honor.

20 BY MR. GAVIN:

21 Q So, Ms. Gregor, did you subject -- let's start
22 with -- we'll work our way left to right here. Starting
23 with item number 21, that jock strap, did you subject that
24 item to serological testing -- I'm sorry to black light
25 testing?

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1 A Yes.

2 Q And did the black light testing -- and did any of
3 these stains on that item fluoresce?

4 A Yes. The biologist looked with the flashlight, or
5 the black light, and there were areas that fluoresced.

6 Q So based on those positive black light results, did
7 you then submit that item for serological testing?

8 A Yes.

9 Q And what were the serological testing results for
10 that item?

11 A For item 21, the jock strap, semen was indicated on
12 that item.

13 Q Did you then perform a confirmatory test?

14 A Yes.

15 Q And was the confirmatory test able to confirm the
16 presence of semen on that item?

17 A No. It was negative.

18 Q Okay. Did you also conduct DNA testing on item
19 number 21, the victim's jock strap?

20 A Yes.

21 Q Okay. And what were your conclusions -- actually,
22 let me pull this up here, Ms. Gregor. Did you reach
23 conclusions as to that jock strap?

24 A Yes.

25 Q Okay. And are those conclusions noted on page 2 of

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1 your report?

2 A Yes.

3 MR. GARNETT: And, Ms. Taylor, if we can go back
4 to Government Exhibit 17 and blow up that chart there in
5 the middle. Thank you.

6 BY MR. GARNETT:

7 Q So, Ms. Gregor, can you walk the jury through your
8 findings as to the DNA found on that jock strap?

9 A So we took a cutting of the stain from the inside
10 back crotch region of the strap junction of the jock strap
11 and performed DNA analysis on it. And male DNA was
12 obtained from this item. And I interpreted the DNA
13 profile as originating from two individuals, one of whom
14 is Mr. Lemagne. I then compared Mr. Legins' known DNA
15 profile this sample and determined that he was included.

16 And the DNA results from item 21, stain 1, are
17 1.3 quadrillion times more likely if Mr. Lemagne and
18 Mr. Legins are contributors than if Mr. Lemagne and an
19 unknown, unrelated person are contributors. And this
20 provides very strong support for inclusion that Mr. Legins
21 is the potential contributor to the DNA evidence profile
22 obtained from this item.

23 I then compared Mr. Jackson's known DNA profile
24 to this sample, and he was excluded as a potential
25 contributor to the cutting of the stain from the inside

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1 back crotch region at the strap junction of the jock
2 strap.

3 Q Okay. Looking at that number, the 1.3 quadrillion,
4 how many zeroes would fall after the 1.3 there on
5 quadrillion?

6 A So it's 1.3, followed by 14 zeros.

7 MR. GARNETT: Ms. Taylor, I apologize for making
8 you jump around. Go back to the photograph there,
9 Government Exhibit 12-A.

10 BY MR. GARNETT:

11 Q All right. Looking at the item there in the middle,
12 Ms. Gregor, that gray pair of shorts, did you also subject
13 that pair of shorts taken from Brandon Lemagne to black
14 light testing?

15 A Yes.

16 Q And did anything on that pair of shorts fluoresce?

17 A Yes.

18 Q So based on that fluorescing, did you then submit
19 those shorts to serological testing?

20 A Yes.

21 Q And what were the results of that serological
22 testing?

23 A For item 22, the shorts, semen was indicated on that
24 item.

25 Q And did you then confirm -- I'm sorry -- prepare --

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1 I'm sorry -- conduct confirmatory testing on that item as
2 well?

3 A Yes, but it was negative.

4 Q Did you also conduct DNA testing on that pair of
5 shorts?

6 A Yes.

7 Q Okay. And did you reach conclusions?

8 A Yes.

9 Q Okay. And are these indicated at the top of page 3
10 of your report?

11 A The bottom of page 2 and top of page 3, yes.

12 Q All right. You're ahead of me.

13 MR. GARNETT: Ms. Taylor, if you could just blow
14 up the chart. I think it's fine. Thank you.

15 BY MR. GARNETT:

16 Q All right. Ms. Gregor, could you please walk the
17 jury through your findings as to the DNA profiles found on
18 Brandon Lemagne's shorts?

19 A So we took a cutting of the stain from the outside
20 back of the shorts and processed that for DNA testing.

21 And male DNA was obtained from that item, and I
22 interpreted the DNA profile as originating from two
23 individuals, one of whom is Mr. Lemagne.

24 I then compared Mr. Legins' known DNA profile to
25 the sample and determined that he was included. And the

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1 DNA results from item 22, stain 1, are 52 quadrillion
2 times more likely if Mr. Lemagne and Mr. Legins are
3 contributors than if Mr. Lemagne and an unknown, unrelated
4 person are contributors. And this provides very strong
5 support for inclusion that Mr. Legins is a contributor to
6 the DNA evidence profile obtained from this item.

7 I then compared Mr. Jackson's known DNA profile
8 to this sample, and it was determined that he was excluded
9 as a potential contributor to this item.

10 Q Thank you.

11 MR. GARNETT: Ms. Taylor, could you please pull
12 up Government Exhibit 11-A?

13 BY MR. GARNETT:

14 Q Ms. Gregor, this photograph has already been entered
15 into evidence as Government Exhibit 11-A, and it depicts
16 the contents of Government's Exhibit 11. Do you recognize
17 the items depicted in this photograph?

18 A Yes.

19 Q And did you test any of the items in this photograph?

20 A Yes. In this photograph, the poncho was tested for
21 DNA.

22 Q Okay. Just because that's not what I would picture a
23 poncho looking like, can you just circle there on the
24 screen where the poncho is located?

25 A Whoops.

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1 Q Thank you. All right. Did you perform serological
2 testing on this poncho?

3 A Yes.

4 Q Okay. And what did the serological testing results
5 come back on on that poncho?

6 A Semen was indicated on item 29, which was the poncho.

7 Q Okay. And were you able to perform DNA testing on
8 this item?

9 A Yes.

10 Q And what were the results of the DNA testing?

11 A So we took a swabbing from the stain from the inside
12 back upper left of the poncho, and that was submitted for
13 DNA testing. And there was no DNA or sex typing results
14 obtained from this item. Therefore, no comparisons can be
15 made.

16 Q And is that kind of result possible when there's
17 simply not enough DNA to permit testing?

18 A Correct.

19 Q So, Ms. Gregor, looking at --

20 MR. GARNETT: Well, we can -- actually, let's go
21 back to Government Exhibit 12-A, Ms. Taylor.

22 BY MR. GARNETT:

23 Q So, Ms. Gregor, looking at Exhibit 12-A, you
24 mentioned that you tested two of the items located in this
25 photograph; is that right?

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1 A Yes.

2 Q Okay. The photograph shows that those items arrived
3 in the same packaging. Is that something, as a forensic
4 examiner, that raises concerns to you about something
5 called cross-transfer?

6 A That is a possibility that can occur where DNA can
7 transfer from one item to another if they are packaged in
8 the same packaging. But the preferred method is to have
9 each individual item packaged separately.

10 Q In this case, the fact that those two items were
11 packaged together, does the possibility of cross-transfer
12 in any way undermine your confidence in the statistical
13 results you reached as to the DNA profiles you found?

14 A No. Again, for DNA testing, I can't say how DNA got
15 on an item of evidence. We simply just process those
16 items and obtain a DNA profile and perform comparisons and
17 state those comparisons in the report.

18 MR. GARNETT: Thank you, Ms. Gregor.

19 THE COURT: All right. Any cross?

20 MR. GAVIN: Yes, sir, unless you want to do
21 lunch now?

22 THE COURT: No. Let's keep moving.

23 MR. GAVIN: Okay.

24 **CROSS-EXAMINATION**

25 BY MR. GAVIN:

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1 Q Good morning.

2 A Good morning.

3 Q Ms. Gregor, you have testified countless times for
4 the FBI, correct?

5 A Yes.

6 Q And because of that, you would be familiar --

7 MR. GAVIN: Mr. Spivey, if I could show you
8 this.

9 THE COURT: Do you want to tell us what the
10 exhibit number is?

11 MR. GAVIN: It would be Number 13(sic).

12 THE COURT: Okay. Is this in your book or not?

13 MR. GAVIN: No. This is just for
14 cross-examination.

15 THE COURT: Okay. Go ahead. You can show it to
16 the witness.

17 BY MR. GAVIN:

18 Q You would be familiar with standards set forth from
19 the FBI about how you can testify at trial, correct?

20 A Yes.

21 Q Okay. Can you turn over to paragraph 5 of that
22 document?

23 THE COURT: Do you have a copy for me?

24 MR. GAVIN: For --

25 THE COURT: All right. Go ahead. We'll see if

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1 I need it. It's more important that you all have it. If
2 there's an issue, I'll take a look at it.

3 BY MR. GAVIN:

4 Q Can you read the title to the document first,
5 Ms. Gregor, on the front page?

6 A So on page 4 of 6, for 5 it says, "Statements not
7 approved for FBI Autosomal DNA Testimony and/or Laboratory
8 Reports."

9 Q All right. So what's 5.1 say?

10 A 5.1 says, "Absolute identification." And then
11 followed by, "An examiner may not state or imply that a
12 match provides an absolute identification of the
13 individual from whom the biological material originated."

14 Q So is it my understanding that you're not trying to
15 say that as any part of any opinion you've rendered?

16 A Correct.

17 Q What about 5.2?

18 A For 5.2, it says, "Reasonable Degree of Scientific
19 Certainty," followed by, "An examiner may not state or
20 imply that any conclusion is to a reasonable degree of
21 scientific certainty unless required by a judge or
22 applicable law."

23 Q So just so we're clear, you're not saying that any of
24 your conclusions are to a reasonable degree of medical or
25 scientific certainty?

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1 A Correct.

2 Q Could you read number 5.4?

3 A 5.4 says, "Zero Error Rate," followed by, "An
4 examiner may not state or imply that the procedures used
5 to perform the interpretation and comparisons of
6 autosomal-based DNA testing have a zero error rate or are
7 infallible."

8 Q Could you flip to the front page and just read into
9 the record what the title of this protocol is?

10 A Yes. The title of this standard operating procedure
11 is the "FBI Approved Standards for Scientific Testing and
12 Report Language for Autosomal DNA Testing."

13 MR. GAVIN: Judge, I'd like to admit that as
14 my 12.

15 THE COURT: Any objection to that?

16 MR. GARNETT: No objection.

17 (Defendant Exhibit Number 12 was admitted.)

18 THE COURT: Let me just ask you this,
19 Ms. Gregor. Is that the reason why you use those terms,
20 though, exclusion, limited support, uninformative, limited
21 support, moderate support, strong support, very strong
22 support?

23 THE WITNESS: That is part of the reason, yes.

24 THE COURT: Okay.

25 MR. GARNETT: Your Honor, just very briefly, I

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1 think we might already have a Defense Exhibit 12. We
2 might want to --

3 MR. GAVIN: Your Honor --

4 THE COURT: I'll tell you what we're going to do
5 is at the end of the day -- I'm not taking these folks'
6 time up. We're going to fix all your numbering, because I
7 think -- we need a mathematical course for you, Mr. Gavin.

8 MR. GAVIN: I understand.

9 THE COURT: Unfortunately, you went to law
10 school, but --

11 BY MR. GAVIN:

12 Q Ms. Gregor, I'd like to hand you another document, if
13 I could. Could you read -- do you recognize that
14 document, first?

15 A Yes, I do.

16 Q Is that an FBI-approved document?

17 A Yes.

18 Q And what's the title of that document, Ms. Gregor?

19 A So this is your standard operating procedure or the
20 step-by-step instructions that the biologist will follow
21 for testing, and the title of this document is "Procedures
22 for the One-Step Acid Phosphatase Spot Test."

23 Q All right. So tell the jury a little bit about the
24 one-step acid phosphatase spot test? Is that the test
25 you're talking about when you say that the semen was

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1 indicated?

2 A Yes. So this is the standard operating procedure for
3 the presumptive test of semen. So if we receive a
4 positive result for this presumptive test for semen, then
5 that means that semen is indicated on an item.

6 Q So every time you've told the jury that semen was
7 indicated, you're referring them to a positive result
8 based on this test?

9 A Yes.

10 Q All right. I'd ask you to flip over, if you could,
11 to paragraph 10.1 of this same document. Could you read
12 aloud the contents of paragraph 10.1?

13 A So 10.1 says, "A positive result, (i.e., a pink to
14 purple color) with the AP spot test solution provides a
15 presumptive indication that semen may be present on an
16 item, but it does not constitute an identification of
17 semen. A confirmatory testing procedure is required to
18 identify the presence of semen in a questioned stain."

19 Q So every time you've told the jury that semen was
20 indicated, it was never confirmed, was it?

21 A Correct. It was only indicated on the item and not
22 confirmed.

23 Q So none of your opinion includes a conclusion on your
24 part that there was actually semen on any of the tests
25 that you conducted?

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1 A That is correct. I can only state that semen was
2 indicated on those items. However, it was not identified
3 on those items.

4 Q How does the acid phosphatase test work? What's it
5 based upon?

6 A So it is a color-changing test where we take a
7 swabbing and rub it against an item of evidence, and we
8 will add the acid phosphatase, which is a chemical, to
9 that swab, and if it turns pink to purple color, then that
10 is giving a positive result for the presumptive testing of
11 semen.

12 Q But isn't the fundamental function of the test to
13 test to see whether a particular enzyme is present?

14 A Yes. We are -- so what the test is for is detecting
15 semenogelin, which is part of semen, and that is what it's
16 looking for.

17 Q What's it also part of?

18 A So the presumptive test is not a conclusive
19 identification of semen because it can react with other
20 fluids and give a positive result.

21 Q So it could test positive if, for example, sweat was
22 the origin of the fluid?

23 A I wouldn't say sweat. There are other fluids that it
24 will give a positive result for, such as vaginal fluid.

25 Q There are no other fluids? You're saying there are

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1 no other fluids that would contain the same enzyme?

2 A No, I'm not saying that. That's just one of the
3 examples. The other example would be male urine. That's
4 another example where it could be a positive result.

5 Q All right. I'd like to move forward to your
6 particular test.

7 MR. GAVIN: Judge, and I will endeavor to get
8 the numbers correct, but I'd like to move that particular
9 exhibit in as the next exhibit into evidence. Whatever
10 that number --

11 THE COURT: Any objection?

12 MR. GARNETT: No objection, Your Honor.

13 MR. GAVIN: -- may ultimately be.

14 THE COURT: We'll figure the numbers out later
15 on today.

16 (Defendant Exhibit Number 13 was admitted.)

17 BY MR. GAVIN:

18 Q Ms. Gregor, if I could refer you to Government's
19 Exhibit 15, which you just testified about. Let me know
20 when you're ready. Are you ready?

21 A Yes.

22 Q There's several items on Government's Exhibit 15; is
23 that correct?

24 A Yes.

25 Q Did you test all of those items on the front page,

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1 which are not in numerical order, but they start at item 1
2 on the top and item 62 at the bottom of the page?

3 A Yes. Those are all the items that were tested.

4 Q So out of all these items on this page, is there only
5 one item that indicated initially for the presence of
6 semen through the AP test?

7 A Of all the samples that were tested in this report,
8 they were all examined -- well, not all, but some of the
9 items were examined for the presence of semen. However,
10 none was detected, and there was no positive presumptive
11 result.

12 Q So that would include the oral swabs that are
13 indicated as item 9 on this report?

14 A Yes. So the oral swabs, item 9, was examined for the
15 presence of semen. However, none was detected.

16 Q Was any DNA detected on the oral swabs?

17 A Male DNA was detected on the oral swabs, meaning the
18 sex typing results. So we can tell whether a DNA profile
19 is from a male or female from three locations that we look
20 at. However, no DNA typing results unlike Mr. Lemagne was
21 obtained from the oral swabs. Therefore, no comparisons
22 were made to Mr. Legins and Mr. Jackson.

23 Q If Mr. Lemagne had been forcibly orally raped, would
24 you typically expect to see DNA in the oral swab of the
25 victim?

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1 A It's possible, yes.

2 Q There were also swabs taken from the lips area of
3 Mr. Lemagne, item 11; is that correct?

4 A Yes.

5 Q And did you conduct testing on item 11?

6 A Yes. Item 11, the swabs from the lips and the lip
7 area from Mr. Lemagne, were tested for the presence of
8 semen. However, none was detected. And also underwent
9 DNA testing, and male DNA was obtained from the lip swab
10 or lip area. And no DNA typing results unlike Mr. Lemagne
11 were obtained from that item. Therefore, no comparisons
12 were made to Mr. Legins and Mr. Jackson.

13 Q Ms. Gregor, if Mr. Lemagne had been forcibly orally
14 raped and nothing had happened to him by way of washing
15 his face, washing his lips, brushing his teeth, anything
16 else that would eliminate the presence of a particular
17 sample, would you expect that DNA to be recovered from the
18 lip swabs from somebody that had been orally raped?

19 A It could be possible, yes.

20 Q Ms. Gregor, did you look at the rape kit to determine
21 whether or not the nurse withdrew samples from the right
22 hand?

23 A Yes.

24 Q Would the rape kit analyst take samples from anywhere
25 or would they take samples from where they believe that

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1 semen or DNA would exist?

2 A It would be my expectation that they would collect
3 from areas of interest.

4 Q So it appears that they collected two swabs from the
5 right hand of Mr. Lemagne at St. Mary's when he went in
6 for his rape kit; is that correct?

7 A Yes.

8 Q Did you test those items?

9 A Yes.

10 Q What did you find?

11 A So that item was item 13, which was the swabs from
12 the right hand of Mr. Lemagne, and that was submitted for
13 DNA testing. And male DNA was obtained from the swabs
14 from the right hand.

15 I then interpreted the DNA profile as
16 originating from two individuals, one of whom is
17 Mr. Lemagne. I then compared Mr. Legins' DNA -- or known
18 DNA profile to that sample. And the DNA results from
19 item 13, which are the swabs from the right hand, are two
20 times more likely if Mr. Lemagne and an unknown, unrelated
21 person are contributors than if Mr. Lemagne and Mr. Legins
22 are contributors. And this provides limited support for
23 exclusion that Mr. Legins -- of Mr. Legins. I then --

24 Q Based on the scale that you referred to, where does
25 limited support for exclusion come in?

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1 A So limited support for exclusion is when we obtain a
2 statistic or a likelihood ratio of greater than 1 to 100
3 to .5.

4 Q So that's almost -- the second to lowest category.
5 It's only one above absolute exclusion; is that correct?

6 A Correct.

7 Q There were thigh and external genitalia swabs taken
8 from Mr. Lemagne which were reflected as item 3 on this
9 report; is that correct?

10 A Yes.

11 Q The same thing. Did you find any DNA or semen on the
12 thigh or the external genitalia swabs of Mr. Lemagne?

13 A The item 3, which was the thigh and external
14 genitalia swabs, underwent serological examination for
15 semen, and the -- it was examined for the presence of
16 semen. However, none was detected.

17 It then underwent DNA testing, and male DNA was
18 obtained from the thighs, external genitalia swabs, and
19 there was no DNA typing results unlike Mr. Lemagne that
20 were obtained -- that was obtained from this item.
21 Therefore, no comparisons were made to Mr. Legins and
22 Mr. Jackson.

23 Q Ms. Gregor, there were also numerous other samples
24 that were submitted for your evaluation; is that correct?

25 A Yes.

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1 Q All right. On that same document, Government's
2 Exhibit 15, it references, about two-thirds of the way
3 down the page, items 57 through 26, which appear to be
4 swabs taken from an elevator. Are you familiar with those
5 swabs?

6 A Yes.

7 Q And do they continue on the next page from items 63
8 to 65?

9 A Yes.

10 Q And are they swabs that were taken from the elevator
11 related to the March 16th, 2018, incident?

12 A Yes.

13 Q And do you know how those swabs were taken?

14 A No. I wasn't present.

15 Q Is there anything from any of those swabs that
16 confirmed that Mr. Legins' DNA or semen was in the
17 elevator?

18 A Those swabs were not tested.

19 THE COURT: Are you going to move on to the next
20 report?

21 MR. GAVIN: Yes, sir.

22 THE COURT: I think what we're going to do is
23 we're going to break now for lunch.

24 MR. GAVIN: Okay.

25 THE COURT: So, folks, we're going to break now.

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1 I'm going to give you an extra five minutes. So we'll
2 break until 1:45 for lunch.

3 So all rise for the jury, please.

4 (The jury exited the courtroom.)

5 THE COURT: Ms. Gregor, you can step down. Do
6 not discuss your testimony with anybody over the lunch
7 break. Okay?

8 (Witness stood aside.)

9 THE COURT: Everybody can be seated because I
10 want to discuss a couple of housekeeping matters here
11 before we break, and that's this.

12 So I had asked the government about the 413
13 evidence of the other two inmates. Here's what I'm going
14 to do. I've gone back and I've looked at my opinion that
15 I issued before. Now having heard the evidence, what I'm
16 going to do is this. I'm going to reverse my decision.
17 I'm going to preclude that evidence under Rule 403,
18 finding that the probative value of that evidence, in the
19 government's case in chief, does not outweigh the
20 prejudice that would occur to Mr. Legins.

21 However -- and this is the part of it where
22 you're going to have to get involved. If the -- you put
23 on evidence such that the testimony of other inmates would
24 be appropriate in rebuttal, I'm going to reconsider it
25 then. So what I'm doing is I'm striking the evidence of

1 the other two inmates for the case in chief. But
2 particularly -- I don't know if your client is going to
3 testify or not, but if he were to testify and be
4 cross-examined, have you ever had sex with an inmate at
5 FCC Petersburg or any other institution --

6 MR. GAVIN: I understand.

7 THE COURT: -- he says no, they're going to get
8 to put this on. Because having looked back at the facts
9 and heard what were proffered before and now hearing the
10 evidence, which I think has gone in quite cleanly, I just
11 think the probative value is such that we're not going to
12 put it in. So I'm taking a decision away from you,
13 government, is what I'm telling you.

14 Now, having said that, I'd like to have a handle
15 on -- he's going to cross-examine this expert. I gather
16 you have the agent yet on the false statements. I gather
17 that is Agent Lavender again, right?

18 MR. GARNETT: Yes, sir.

19 THE COURT: What else are we going to have? I'm
20 just trying to get a handle on what's going on here -- or
21 an idea of what's going on here.

22 MR. GARNETT: Yes, Your Honor. We've got
23 several additional employees of the Bureau of Prisons.
24 Several additional correctional officers that will testify
25 as to the defendant's behavior that evening following

1 the --

2 THE COURT: Okay. So who are those folks?

3 MR. GARNETT: That will be -- and, Your Honor,

4 this is out of order for me. So --

5 THE COURT: I'm just getting a general idea.

6 MR. GARNETT: Yes, sir. That will be Officer

7 Ryan McLaughlin.

8 THE COURT: Okay.

9 MR. GARNETT: Officer Timothy Coleman, Officer
10 Harry Parker and Officer Duane Farmer. Then Your Honor --

11 THE COURT: And then what else you got?

12 MR. GARNETT: Yes, Your Honor. After that,
13 we -- I shouldn't say after that. We additionally have,
14 Your Honor, a technology manager, Darryl Strausser, who
15 will testify to computer access, which is part of the
16 defendant's alibi.

17 THE COURT: Okay.

18 MR. GARNETT: We also have EMT Sarah Ramsey,
19 Your Honor. That's the individual who treated the victim
20 immediately after the assault at FCI Petersburg.

21 THE COURT: Okay.

22 MR. GARNETT: We also have Nurse LaShawn Ruffin.
23 She's a commander with the US Public Health Service,
24 Judge. She treated or examined the victim, Brandon
25 Lemagne, at FCI Butner after he arrived there following

1 his transfer from FCI Petersburg.

2 THE COURT: And the value of that again was
3 what?

4 MR. GARNETT: The value of that, Your Honor, is
5 she discovered bruising on the defendant -- I'm sorry, on
6 the victim.

7 THE COURT: In what area? I mean, you put Nurse
8 Womble on, who said there was no injuries whatsoever.

9 MR. GARNETT: Nurse Womble also testified, Your
10 Honor, that bruising can take some time to develop and
11 that it can remain on an individual sometime after the
12 trauma.

13 THE COURT: That's fair enough. So it sounds
14 like you're going to be done in the morning?

15 MR. GARNETT: Judge, one more witness -- I'm
16 sorry. I just want to make sure I don't leave the Court
17 with false hopes.

18 THE COURT: Right.

19 MR. GARNETT: Dr. Wolf Walker is a clinical
20 psychologist who interviewed Brandon Lemagne very shortly
21 after the May 10th incident.

22 THE COURT: What's -- I mean, she wrote a report
23 or something like that, right?

24 MR. GARNETT: She did write a report,
25 Your Honor.

1 THE COURT: Are you going to try to impeach your
2 own witness or what are you going to try to do here?

3 MR. GARNETT: Your Honor, we have her listed as
4 one of our experts, Your Honor. She is to testify as to
5 her conclusions, her familiarity with -- well, she's a
6 clinical psychologist, Your Honor, and some of that
7 informs -- I'll defer to my co-counsel who, who actually
8 will be directing that witness. But she'll be testifying
9 as to her understanding of both her interview and her
10 findings.

11 THE COURT: All right. So you'll be done in the
12 morning.

13 Here's what I'm going to do. At the end of the
14 day, I'm going to colloquy the defendant about whether or
15 not he wants to testify. So I want you to discuss this
16 with him as to whether he wants to do it.

17 Now, if he changes his mind tomorrow, we'll deal
18 with it, but I want to go over this today because I want
19 to give an idea to the jury about how much time we're
20 talking about. It sounds like they're going to be done in
21 the morning at some point before lunch.

22 MR. GAVIN: Yes, sir.

23 THE COURT: How much are you envisioning?

24 MR. GAVIN: If those two 413 witnesses are
25 removed --

1 THE COURT: Yeah, they're --

2 MR. GAVIN: -- my case will be significantly
3 shorter, and I should be done by the afternoon. I should
4 be done by mid afternoon.

5 THE COURT: Okay. All right. Is there anything
6 else I need to know about this?

7 MR. GAVIN: Judge, as only a matter of
8 housekeeping, we introduced a lot of the records that I
9 was going to use in my case that were specifically
10 directed towards the 413 witnesses. So they have been
11 introduced already, but they'll be irrelevant now, but
12 they are admitted as part of my case. So I don't want the
13 Court to think that I'm trying to set that in my case.

14 THE COURT: Look, I just reversed myself.

15 MR. GAVIN: Yep.

16 THE COURT: So I understand. Here's what we're
17 going to do is if there is no reason to call those inmates
18 in rebuttal, we'll withdraw those exhibits --

19 MR. GAVIN: Yes, sir.

20 THE COURT: -- before they go to the jury --
21 we'll use tomorrow -- late tomorrow afternoon when we're
22 done to finish the jury instructions, depending on whether
23 or not your client decides he wants to testify.

24 MR. GAVIN: Yes, sir.

25 THE COURT: And any other things I need to fix,

1 we'll do that, and then you're going to go over the
2 exhibit list to make sure that we know exactly what
3 exhibits are going to the jury and which ones are not.
4 And then -- then we'll finish it up on Wednesday morning.

5 MR. GAVIN: Yes, sir.

6 THE COURT: All right. My worry was that you're
7 all going to be done in the morning. Like, if you're
8 resting your case and both of you are resting and there's
9 no case by lunchtime, I'm not going to wait until
10 Wednesday morning. I mean, we're going to do closings
11 tomorrow afternoon. But if you're going into after the
12 lunch break, you know, that's a different story. I would
13 just stop early, and that's it. But I'm not going to
14 waste a half a day of the jury's time.

15 MR. GAVIN: Yes, sir.

16 THE COURT: So -- is that -- everybody on the
17 same page on that?

18 MR. GARNETT: Yes, Your Honor. The only thing
19 that I'd ask, Your Honor, is that in light of the fact the
20 defendant could always have a change of heart regardless
21 of what his response to Your Honor's colloquy is this
22 afternoon, that we not excuse those 413 witnesses until
23 the defense has well and truly rested and he's been
24 colloquied --

25 THE COURT: They're not. I did want to ask --

1 I'm glad we brought that up, though. Can we excuse
2 Mr. Lemagne? Because the marshals are holding him. I
3 told him to stay. Is there any reason that we need to
4 keep Mr. Lemagne for either one of your cases?

5 MR. GAVIN: Not on behalf of the defense.

6 MR. GARNETT: Not for the government, Your
7 Honor.

8 THE COURT: So I can direct the marshals they
9 can return him to wherever they want to return him to by
10 agreement?

11 MR. GARNETT: That's correct, Your Honor.

12 MR. GAVIN: Yes, sir.

13 THE COURT: Okay. I'll tell him to hold on to
14 the 413 witnesses, and we'll make that final decision
15 after I see what the defense's evidence is okay? All
16 right.

17 Is there anything else we need to do before we
18 break for lunch?

19 MR. GAVIN: No, sir.

20 MR. GARNETT: No, Your Honor.

21 THE COURT: Okay.

22 (Recess from 12:49 p.m. until 1:50 p.m.)

23 THE COURT: All right. We're going to bring the
24 jury in. All rise.

25 (The jury entered the courtroom.)

1 THE COURT: All right. Everybody can be seated.

2 All right. Do we have Ms. Gregor?

3 Everybody doing okay over there?

4 A JUROR: Yes.

5 A JUROR: Yes.

6 THE COURT: All right. Ms. Gregor, I'm going to
7 remind you you continue to be under oath.

8 THE WITNESS: Yes.

9 THE COURT: Why don't you have a seat. Make
10 yourself comfortable.

11 Mr. Gavin.

12 MR. GAVIN: Thank you, Judge.

13 BY MR. GAVIN:

14 Q Good afternoon, Ms. Gregor.

15 A Good afternoon.

16 Q Ms. Gregor, when we left off, we had just discussed
17 your first lab and we were moving on to the second lab,
18 which was Government's Exhibit 16 that includes the
19 sweatshirt; is that correct?

20 A Yes.

21 Q And the same thing as before. The initial test
22 tested positive for semen, but you could never confirm it;
23 is that correct?

24 A That is correct.

25 Q I'm going to move to the next report, which is your

Kara Gregor - Cross

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1 July 10th, 2019, report. Do you have that in front of
2 you?

3 A Yes, I do.

4 Q And is that Government's 17?

5 A Yes.

6 Q And what, if anything, tested positive for semen on
7 that report?

8 A So item 21, the jock strap, semen was indicated on
9 that item. And then also item 22, the shorts, semen was
10 indicated on that item. And item 29, the poncho, semen
11 was indicated on that item.

12 Q And none of -- in none of the three was there semen
13 confirmed, correct?

14 A Correct.

15 Q Matter of fact, the poncho would be a perfect example
16 of why you need to do that confirmatory test, would it
17 not?

18 A It was not performed on this item of evidence.

19 Q So that's -- you tested positive for semen on the
20 acid phosphatase test, but nothing else was ever
21 confirmed, including DNA or semen?

22 A The presumptive test for semen was performed on the
23 poncho. However, the confirmatory test was not conducted
24 on this item.

25 Q There's really nothing we can gather from the poncho?

Kara Gregor - Cross

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1 A Well, it was taken forward for DNA, and there are DNA
2 results.

3 Q Ask you to identify one more item, Ms. Gregor.

4 MR. GAVIN: This will be another exhibit when I
5 get my exhibits.

6 THE COURT: Just -- what is it marked right now?
7 Because what we're going to do it we're going to put on
8 the record -- the court reporter has got a transcript, and
9 right now, she's referencing exhibit numbers, but we'll
10 correlate that at the end --

11 MR. GAVIN: We'll mark it 15.

12 THE COURT: -- so that her transcript -- Number
13 15?

14 BY MR. GAVIN:

15 Q Ms. Gregor, do you recognize that document?

16 A Yes, I do.

17 Q What is that document?

18 A So this is a document that we provide in our case
19 file, and it is the case report, meaning it is a list of
20 all the evidence items that we receive at the FBI
21 Laboratory.

22 Q So this list includes, does it not, items 1 through
23 69; is that correct?

24 A Yes, and additional items on the additional pages.

25 Q Other than the four items that I've highlighted,

Kara Gregor - Cross

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1 which were testified about, are there any items in there
2 that reflect either Mr. Legins' semen or his DNA?

3 A You didn't highlight item number 29, the poncho,
4 which was also tested that -- semen was indicated on that
5 item.

6 Q You're correct. My mistake. On the back page,
7 there's several items that appear to be documents entitled
8 "Parenting Class, Financial Seminar." What's your
9 understanding of what those documents were?

10 A I'm sorry. Can you repeat that?

11 Q Yes, ma'am. On the second page, beginning at
12 item 32 -- actually, it starts on the beginning page --
13 the prior page at item 31. But item 31 through item 39
14 appear to be papers entitled "Parenting Class." Do you
15 remember what they were?

16 A No. Those weren't received in the DNA case work
17 unit.

18 Q Do you know what they -- where they came from?

19 A I do not know.

20 Q All right. So you didn't test either of those, the
21 parenting class documents or the financial seminar
22 documents?

23 A They were not tested, and they were not received in
24 the DNA case work unit, but they were received at the FBI
25 Laboratory.

Kara Gregor - Cross

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1 Q Item 66 and item 67 reflect that you conducted tests
2 for trace evidence. Can you explain what trace evidence
3 is?

4 A So trace is another unit that does testing at the FBI
5 Laboratory, and I'm not a qualified trace examiner.
6 However, it is items that is marked as trace hair fiber,
7 secondary evidence, and that is something that they have
8 to put in and document as evidence.

9 Q So as part of your case file, not only was DNA
10 evaluated, but trace fibers like hair, pubic hairs,
11 anything that would be outside of the realm of DNA was
12 also tested, to your knowledge?

13 A I can't speak to what was tested by the trace
14 evidence unit because I'm not a trace evidence unit
15 examiner.

16 Q Are you aware of any positive results from the trace
17 evidence that would link Mr. Legins to any piece of
18 evidence discovered in the trace investigation?

19 A No, I'm not aware.

20 MR. GAVIN: 12-A, Ms. Taylor.

21 BY MR. GAVIN:

22 Q Ms. Gregor, this is one exhibit that I cannot screw
23 up because it was already admitted by the government. Can
24 you pull up 12-A? I think you just testified to that as
25 well.

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1 A What was Government Exhibit 12-A?

2 Q I think it's coming up. Do you recognize that?

3 A Yes.

4 Q What is that?

5 A That is a picture of a couple evidence items that was
6 tested by my unit, the DNA case work unit.

7 Q And they came to you like this?

8 A Not like that. There are additional markings that
9 are marked by the biologist who's performing the testing
10 in the laboratory.

11 Q That was a bad question. Did they all come together
12 in one package?

13 A Yes.

14 Q All right. So they weren't individually wrapped, as
15 you suggested might be the proper procedure, when they
16 came to you?

17 A Correct. They were packaged together. But it is the
18 preferred method to separate each individual item into
19 separate packaging.

20 Q So you can't really say with certainty whether the
21 DNA that was found on 1 came from 2 or the DNA that was
22 found on 2 came from 1. Is that fair?

23 A That is correct. There's a possibility for transfer
24 to occur, and I can't say how the DNA got there.

25 Q Did you test either the lip balm on the right or the

Kara Gregor - Redirect

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1 tissue paper on the right?

2 A No.

3 Q So, Ms. Gregor, it really comes down to how can you
4 transfer DNA? If I touch you, can my DNA transfer to you?

5 A Yes. So there are different types of transfer. So,
6 for example, there is primary transfer, which is where if
7 I were to touch the desk and then swab the desk where I
8 just touched, I would expect my DNA profile, and that
9 would be primary transfer.

10 For secondary transfer, if I was to touch this
11 cup that was originally touched by this gentleman over
12 here and I was to swab this cup, I would expect to get a
13 profile of my DNA and also his DNA.

14 Q So the DNA not only would be on the cup, but it would
15 transfer to the swab?

16 A Correct.

17 Q And the swab would then be transferred to your
18 testing, I guess, site?

19 A It would be what the results would be from the DNA
20 testing, yes.

21 MR. GAVIN: Ms. Gregor, thank you very much. I
22 have no other questions.

23 THE COURT: Any redirect?

24 MR. GARNETT: Very briefly, Your Honor.

25 **REDIRECT EXAMINATION**

Kara Gregor - Redirect

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1 BY MR. GARNETT:

2 Q Ms. Gregor, talking about the transfer there, and
3 just briefly here, you said you would expect to find a DNA
4 profile somewhere. When you say "expect," do you mean is
5 it possible that you would find a DNA profile?

6 A Yes.

7 Q Because is it fair to say that contact with something
8 does not automatically transfer DNA?

9 A That is correct. So each person -- each person sheds
10 a different amount of skin cells, and so, therefore, if I
11 was to quickly touch something and then swab it, I may not
12 exactly get a DNA profile from myself. It also depends on
13 how long that contact was for.

14 Q So Mr. Gavin also mentioned that there were a number
15 of items received by your DNA case work unit. Some of
16 those included elevator swabs; is that right?

17 A Yes.

18 Q Okay. Why didn't you test the elevator swabs,
19 Ms. Gregor?

20 A The swabs from the elevator were not tested because
21 it was mentioned to me from Special Agent Johnny Lavender,
22 in this case, that the elevator was cleaned. And also, an
23 elevator contains DNA -- or I would expect DNA from a
24 mixture of individuals or innocent individuals who have
25 been in that elevator before.

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1 Q Okay. So is it fair to say that a common area, like
2 an elevator or a restroom, would be a spot you would
3 expect to find a mixture of DNA with more than four
4 profiles?

5 A Yes. That is my expectation.

6 Q And a mixture with more than four individuals in that
7 DNA mixture is not something your lab would be able to
8 sort out and ascertain the individual profiles?

9 A Correct. We can't interpret or do comparisons to
10 mixture DNA profiles that have five or more people.

11 MR. GARNETT: That's all. Thank you, Your
12 Honor.

13 Thank you, Ms. Gregor.

14 THE COURT: All right. Ms. Gregor, thank you so
15 much for your testimony. You're excused. I'm going to
16 ask you not to talk about your testimony until the trial
17 is over with anybody else. Okay? Thank you.

18 THE WITNESS: Thank you.

19 (Witness stood aside.)

20 THE COURT: All right. Do you want to call your
21 next witness?

22 MR. GARNETT: Yes, Your Honor. The
23 United States would call Officer Ryan McLaughlin.

24 MR. GAVIN: Judge, I saw that Ms. Gregor was
25 pregnant. So I didn't know if we wanted to excuse her if

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1 she wasn't necessary.

2 THE COURT: Do you want to permanently excuse
3 her? That's fine with me.

4 MR. GARNETT: That's fine for the government,
5 Your Honor.

6 THE COURT: You agree with that?

7 MR. GAVIN: Yes, sir.

8 THE COURT: All right. She'll be permanently
9 excused. You can let -- Ms. Ulmet can let her know.

10 MR. GARNETT: Thank you, Your Honor.

11 THE COURT: Are you ready?

12 MR. GARNETT: Thank you, Your Honor.

13 **RYAN MCLAUGHLIN,**

14 called by the government, first being duly sworn,
15 testified as follows:

16 **DIRECT EXAMINATION**

17 BY MR. GARNETT:

18 Q Good afternoon, Officer.

19 A Hi.

20 Q Could you please introduce yourself to the jury and
21 state your -- I'm sorry -- spell your first and last name?

22 A Yeah. My name is Ryan McLaughlin. R-Y-A-N,
23 M-C-L-A-U-G-H-L-I-N.

24 Q And how are you currently employed, Officer?

25 A I'm a senior officer at FCC Petersburg.

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1 Q How long have you been there?

2 A Roughly 11 years.

3 Q Have you been with other jobs -- have you had other
4 employment prior to joining the Bureau of Prisons?

5 A Yes, I have.

6 Q What were those?

7 A I worked at Riverside Regional Jail. I was an
8 exhibits and information technology specialist. I was
9 also a juvenile correctional officer.

10 Q And as a correctional officer at FCI Petersburg --

11 MR. GARNETT: Thank you, Officer Spivey.

12 BY MR. GARNETT:

13 Q -- what are your duties there?

14 A I'm sorry. Can you repeat the question?

15 Q What are your duties at FCI Petersburg?

16 A Maintain the safety and security of the inmates in
17 the institution.

18 Q What would you say is your bottom-line responsibility
19 as a federal correctional officer?

20 A Keep the inmates safe.

21 Q Officer McLaughlin, were you on duty at FCI
22 Petersburg on the night of May 10th, 2018?

23 A Correct.

24 Q At some point that night were you contacted by
25 Lieutenant Arrant?

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1 A Yes, I was.

2 Q And what did you understand Lieutenant Arrant -- what
3 role did you think he was filling that evening?

4 A He was asking me to take an inmate out to get a rape
5 assessment done.

6 Q Is Lieutenant Arrant the operations lieutenant, to
7 your understanding?

8 A He would be the operational lieutenant.

9 Q I'm sorry I made you go back. What did Lieutenant
10 Arrant ask you to do?

11 A To take an inmate out on a medical escort trip for a
12 rape assessment.

13 Q What does a medical escort trip involve from your
14 perspective as a correctional officer?

15 A We have special training to take the inmates out to
16 local hospitals. And we take them out for numerous
17 things. One of them being the rape kits. One of them
18 being if they're sick or anything like that.

19 Q Did you leave your post in order to go start that
20 assignment?

21 A Yes, I did.

22 Q Where did you go first?

23 A First, I went to the lieutenant's office and -- as
24 far as going from there. After that, lieutenant's office,
25 they told me where I needed to go. Then from there, I

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1 went to the medical housing area, and that's where the
2 inmate was at that time.

3 Q What inmate was present in the medical housing unit
4 when you arrived?

5 A Inmate Lemagne.

6 Q Was there anyone else present in the room with Inmate
7 Lemagne?

8 A Yes. Nurse Ramsey.

9 Q Were you familiar with Brandon Lemagne prior to this
10 incident?

11 A Not really, no.

12 Q Did you speak with Brandon Lemagne at this point to
13 ask him what had happened?

14 A Yes, I did.

15 Q Okay. And what would be the reason to ask an inmate
16 what had happened to them prior to starting a medical
17 escort trip?

18 A To kind of figure out where the inmate's head is at
19 that point, what's going on. Not only do I want to keep
20 the inmate safe, I also want to keep me and the other
21 officer that would be going out with me safe at that
22 point.

23 Q So if you've got a situation -- you said the
24 Lieutenant Arrant told you you were going to the hospital
25 for a rape evaluation?

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1 A Yes.

2 Q So if the purpose of the medical escort was the rape
3 evaluation, would you need to know who the alleged
4 assailant was?

5 A Yes.

6 Q And would that be in order to keep the victim safe?

7 A That's correct.

8 Q So did you ask Brandon Lemagne what had happened to
9 him?

10 A Yes, I did.

11 Q And what were the basic facts that he gave you?

12 A I asked Lemagne, I said, you know -- I asked him if
13 he was raped. He said yes. I asked was it by another
14 inmate, which that's the normal at where we work at. Not
15 the normal as far as it happening a lot, just that would
16 be the average of what would happen. He said no. I said
17 was it a counselor. He said no. I said was it staff. He
18 said yes.

19 Q Did you ask Brandon Lemagne at this point which staff
20 member he was alleging raped him?

21 A No, I did not.

22 Q What did you do after hearing this from Brandon
23 Lemagne?

24 A I went to our SIS department, which stands for
25 Special Investigative Services, and told them what Lemagne

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1 said.

2 Q Why did you feel the need to immediately go to the
3 special investigation section?

4 A That was above me at this point.

5 Q What do you mean it was above you?

6 A It was -- when you have staff involved with
7 something, then that would be -- somebody higher up needs
8 to be associated with that besides me.

9 Q Did you return to the medical observation room after
10 passing that report?

11 A Yes, I did.

12 Q And while in the medical observation room, did you
13 assist with evidence recovery?

14 A Yes, I did.

15 Q During that process -- is Brandon Lemagne still
16 there? I should go back.

17 A Yes.

18 Q During the process of the evidence collection, did
19 Brandon Lemagne say anything?

20 A Yes. He said -- I asked him -- because he kept
21 standing up, and I asked him, I said, "You can sit down if
22 you want." He didn't want to sit down. I asked him why
23 he didn't want to sit down. He said he didn't want any of
24 it to leak out.

25 Q Did he say anything about semen in particular or just

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1 that phrase?

2 A That was that phrase.

3 Q Okay. Did Mr. Lemagne say anything in regards to a
4 T-shirt?

5 A Yes. He said when the -- his T-shirt was ripped in
6 the back.

7 Q Did -- at this point -- up to this point in the
8 conversation, you still had not asked Brandon Lemagne who
9 he was alleging assaulted him, correct?

10 A Correct.

11 Q Did Brandon Lemagne explain to you where this assault
12 had taken place?

13 A Yes, he did. It was in the Fox South unit team area,
14 which that would be where the secretary's office is.

15 Q Have you done time in the housing units as a
16 correctional officer?

17 A Yes.

18 Q Are you familiar with the unit team area in Fox
19 South?

20 A Yes, I am.

21 Q And what does that area -- just quickly for the jury,
22 what does that area look like?

23 A You have a Fox South unit and you have a Fox North
24 unit. In between the two units, you're going to have a
25 corridor, like a hallway area. In that hallway area,

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1 you're going to have a few offices on the right-hand side,
2 but the main one would be when you go into the left side.

3 And that would be -- if you're going from the Fox South
4 area, that would be where the secretary's office is.

5 Q During the day, are there staff there, secretaries?

6 A In the daytime, there are.

7 Q Okay. What about in the evenings?

8 A Rarely not.

9 Q Okay. Are there cameras, to your knowledge, in the
10 unit team area?

11 A No.

12 Q So you've been a correctional officer, I think you
13 said, for ten years. Would it be your practice to take an
14 inmate into the unit team area after hours?

15 A No.

16 Q Shortly after you had this exchange with Brandon
17 Lemagne, did you sit down and draft up a very brief
18 statement?

19 A Yes, I did.

20 Q Okay. And was the purpose of that statement simply
21 to describe what you had observed in the observation room?

22 A Yes.

23 Q Later that evening, Officer McLaughlin, did you draft
24 up a second memorandum that covered the entire evening?

25 A Yes, I did.

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1 Q So after the evidence collection process is finished,
2 did you escort Brandon Lemagne back to the lieutenant's
3 office?

4 A Yes, I did.

5 Q And what does that walk look like for the jury?

6 A If you're -- when you leave the medical unit, as
7 you're -- you're going to leave the unit. You're going to
8 take a left, and there's going to be a -- two doors on the
9 left-hand side as you're walking, but basically, it's
10 about a 50- to maybe 70-yard walk. You're going to go by
11 a compound door and what is our R&D door.

12 And once you go past those doors, it's pretty
13 much a wide open spot until you get to the actual
14 lieutenant's office.

15 Q And, Officer McLaughlin, I did you a disservice there
16 because we actually have a large demonstrative there.

17 MR. GARNETT: Your Honor, can I request
18 permission to go ahead and display the government exhibit
19 that depicts the compound area?

20 THE COURT: Of course.

21 MR. GARNETT: Thank you.

22 I'm sorry, Officer Spivey. I should have asked
23 about that earlier.

24 THE COURT: I think we introduced this before
25 already; is that right?

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1 MR. GARNETT: We did. I'm not sure which
2 exhibit it was.

3 THE COURT: What's the exhibit number there,
4 Officer Spivey? On the bottom corner, what's the exhibit
5 number?

6 MS. TAYLOR: Seven.

7 MR. GARNETT: It's Government Exhibit 7,
8 Your Honor.

9 THE COURT: Exhibit 7. I just wanted the record
10 to reflect what's going on. Thank you.

11 BY MR. GARNETT:

12 Q And, Officer McLaughlin, I'm guessing you can project
13 your voice far enough to get to the jury.

14 MR. GARNETT: Your Honor, could he step down and
15 just point to a few spots on this?

16 THE COURT: Sure. But the more important --
17 while the jury is important, the court reporter is also
18 important.

19 MR. GARNETT: Yes, Your Honor.

20 THE COURT: She picks up through the microphone.
21 So when you're standing up, just stand up on this side of
22 the chart and speak towards that microphone in a loud
23 voice. Okay?

24 BY MR. GARNETT:

25 Q So, Officer McLaughlin, if you could go ahead and

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1 show us where the lieutenant's office is located first.

2 A Yes. The lieutenant's office, I believe, if I'm
3 looking at this correctly, is going to be in this area
4 right here.

5 Q And where would the medical office be located?

6 A It's going to be back here.

7 THE COURT: Hold on a second. We need to put in
8 the record what he's saying. So he's pointing. So when
9 you point, I'd like you to tell me what area you're
10 pointing to.

11 THE WITNESS: Okay.

12 THE COURT: Okay? So let's go back. So the
13 first question was which?

14 MR. GARNETT: The lieutenant's office,
15 Your Honor. And I realize there are numbers in the chart
16 hopefully would --

17 THE COURT: Yeah. That's what I was thinking he
18 could do. He could correspond.

19 MR. GARNETT: Yes, Your Honor.

20 THE COURT: Go ahead.

21 THE WITNESS: May I scoot this back, because
22 there's no way you're going to be able to hear me?

23 THE COURT: Yeah. That's fine.

24 A All right. Your medical office is going to be
25 roughly about in this area right here. You're going to

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1 have a compound --

2 THE COURT: Is there a number there?

3 THE WITNESS: It's going to be in segment -- I'm
4 assuming would be segment 37.

5 THE COURT: Okay.

6 A And then you're going to have a compound office in
7 segment 23. And then directly beside the compound office,
8 you're going to have an R&D door, which is going to be
9 also in segment 23.

10 You're going to walk from the actual segment 37,
11 past 23, all the way down to around this corner right
12 here. And -- I don't -- that corner doesn't have a
13 segment as far as a number.

14 THE COURT: Is that in the direction of the
15 compound, basically?

16 THE WITNESS: This would be in the direction of
17 the compound, going past the compound and the R&D door,
18 going into the lieutenant's office. It's all in the same
19 route.

20 THE COURT: Okay. And the lieutenant's office,
21 is it between number 24 and number 23?

22 THE WITNESS: No. The lieutenant's office is
23 going to be in the -- yeah, I guess you would say that.
24 It's going to be in between 24 and 23. That's on the --
25 it's actually on the corner of -- it's in the same area as

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1 segment 23, but just on the corner of it.

2 THE COURT: Okay.

3 MR. GARNETT: Thank you, Your Honor.

4 BY MR. GARNETT:

5 Q So, Officer McLaughlin, as you're leaving the medical
6 office, are you walking along a sidewalk that parallels
7 building 23, we'll call it?

8 A Yes.

9 Q Okay. And is that sidewalk -- I know we're in the
10 evening now. Is that sidewalk illuminated by floodlights
11 or some other kind of lighting?

12 A Yes, it is.

13 Q And from your experience at the compound, is that
14 sidewalk, when you step out of the medical office, is that
15 visible from the housing units that are arranged at the
16 top --

17 A Yes.

18 Q -- of that diagram?

19 A Yes, it is.

20 Q So as you walk down that sidewalk -- you can go ahead
21 and have a chair again, Officer McLaughlin. Thank you.

22 After you left the medical office and you were
23 walking down that sidewalk, are you escorting Brandon
24 Lemagne?

25 A Yes, I did.

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1 Q Did you hear anything at this point coming from the
2 direction of the housing units?

3 A Yes, I did.

4 Q What did you hear?

5 A It sounded like, "You've got to be kidding me."

6 Q Were you able to make out everything that was being
7 said?

8 A It was from a distance, but it sounded exactly like
9 that to me.

10 Q And you said the phrase was "you've got to be kidding
11 me"?

12 A Yes.

13 Q Did that phrase ring any bells in your head? Did it
14 sound familiar?

15 A It did.

16 Q And why did it sound familiar?

17 A It was something that I've heard Legins say before.

18 Q And when you say "Legins," who are you speaking of?

19 A Officer Legins.

20 Q You're talking about Officer Chikosi Legins?

21 A Yes.

22 Q How long have you worked with Officer Chikosi Legins?

23 A I've worked with him for a few years. The exact
24 number I really don't know.

25 Q Okay. Do you see him here in the courtroom today?

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1 A Yes, I do.

2 Q Okay. Could you please identify him to the jury by
3 something he's wearing and where he's seated?

4 A Purplish colored tie, black suit.

5 MR. GARNETT: Your Honor, I'd ask the record
6 reflect that Officer McLaughlin has identified the
7 defendant.

8 THE COURT: So noted.

9 BY MR. GARNETT:

10 Q Officer McLaughlin, at this point -- until this point
11 in the evening, has anyone mentioned the phrase Officer
12 Chikosi Legins to you?

13 A No.

14 Q Now, did you previously note, when discussing this
15 incident, that you were not 100 percent confident --

16 A Yes.

17 Q -- it was the defendant?

18 A Correct.

19 Q What would it take for you to say that you were
20 100 percent confident in something like that?

21 A I'd have to actually see him say it.

22 Q You'd have to see the words coming out of his mouth?

23 A Yes.

24 Q All right. So jumping ahead slightly, Officer
25 McLaughlin, later that night, you mentioned that you had

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1 prepared a second memorandum describing sort of the
2 overall happenings of that evening.

3 A Correct.

4 Q In that memorandum, did you note that you weren't
5 able to make out everything that was said?

6 A Yes.

7 Q Okay. Why did you phrase it that way?

8 A The actual -- from where it was coming across the
9 compound and me not being able to see exactly who it was,
10 I just -- I'm not 100 percent sure if he actually said
11 those words or not. I'm only going by what I heard, where
12 the actual sound was coming from from across the compound.
13 So --

14 Q Did you believe that you had recognized the
15 defendant's voice, though?

16 A Yes.

17 Q Now, again, as you're walking down that sidewalk
18 there, Officer McLaughlin, is there anything that's taking
19 place between you and Brandon Lemagne that would, from the
20 housing units, be observable as some kind of a crisis or
21 some need for alarm?

22 A No. No.

23 Q It would not have appeared that Brandon Lemagne was
24 struggling with you?

25 A No, not at all.

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1 Q Or trying to break away?

2 A No.

3 Q So from your experience as a housing officer and a
4 correctional officer having worked in housing units, would
5 there be any reason you could think of for an officer to
6 verbally accost an inmate in the custody of another
7 correctional officer across the width of the compound?

8 A No.

9 Q After you reached the lieutenant's office, Officer
10 McLaughlin, where did Brandon Lemagne go at that point?

11 A After we reached the lieutenant's office? Is that
12 what you said?

13 Q Yes, sir?

14 A He -- Lieutenant McWilliams pulled him into one of
15 the offices that were inside the actual lieutenant's
16 office. I went into the -- the lieutenant's office area
17 where their room is.

18 Q Did you remain in the lieutenant's area -- I'm
19 sorry -- lieutenant's office?

20 A I'm sorry. I couldn't hear you.

21 Q Did you remain in the lieutenant's office? I'm
22 sorry.

23 A Yes, I did.

24 Q Okay. At some point after Brandon Lemagne left your
25 presence, did you start to observe phone calls coming in

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1 to the lieutenant's office?

2 A Yes, I did.

3 Q And without discussing what was said during those

4 phone calls, did those calls increase your level of

5 concern about whether the defendant might pose a threat to

6 Brandon Lemagne?

7 A Yes, they did.

8 Q Who answered these telephone calls?

9 A Operations Lieutenant Arrant and Lieutenant Kalwalski

10 answered the second one, I believe.

11 Q So these are separate phone calls?

12 A Yes. There was two separate phone calls --

13 Q Did these lieutenants -- I'm sorry. I cut you off.

14 A At the time I was there, it was two separate phone

15 calls.

16 Q Did these two lieutenants indicate who was on the

17 line or who had called?

18 A Yes.

19 Q And who did they say had called?

20 A Legins.

21 Q Did the --

22 A Officer Legins.

23 Q I'm sorry. I keep cutting you off there.

24 A No. You're fine.

25 Q Did either of the lieutenants give you an explanation

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1 as to why the defendant had called the office?

2 A One of the times was he was looking for an inmate
3 that we did not have at our facility. He gave a name that
4 was not on the actual roster.

5 Q If you were a correctional officer, Officer
6 McLaughlin -- well, you are. Let's say you were a housing
7 unit officer again. If you were trying to locate an
8 inmate, where would you -- what spot in the prison would
9 you call to try to track that person down?

10 A Control.

11 Q And what's the control office?

12 A The control office is what actually controls the
13 actual prison itself. And they have -- they know who's
14 coming out and who's coming in to the actual facility.
15 They would know more who would be coming in and out than
16 the lieutenants would.

17 Q What was your reaction to hearing these two calls
18 come in from Officer Chikosi Legins at this point? Did
19 you decide to do anything as a result of learning that?

20 A Yes, I did. After the second phone call came in, I
21 told McWilliams that I would like to leave as soon as
22 possible.

23 Q And why was that?

24 A If -- at that point, if somebody is calling like
25 that, you don't know where their mind is at, if

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1 allegations are true, and --

2 MR. GAVIN: Judge --

3 THE COURT: I'm going to sustain the objection.

4 Let's move on.

5 MR. GAVIN: Speculation.

6 THE COURT: Disregard that response.

7 BY MR. GARNETT:

8 Q Did you leave FCI Petersburg for the hospital shortly
9 after this?

10 A Yes, I did.

11 Q Okay. And did you drive with Brandon Lemagne on the
12 drive to the hospital?

13 A Yes, I did.

14 Q Were you able to observe his demeanor during this
15 trip?

16 A Yes, I was.

17 Q And how would you describe it?

18 A Distraught, not saying a lot, looking out the window,
19 just staring out the window.

20 Q Okay. Did you also drive Brandon Lemagne back to FCI
21 Petersburg after the medical exam?

22 A Yes, I did.

23 Q And you explained earlier, Officer McLaughlin, that
24 one of your responsibilities is the safety of the
25 inmates --

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1 A Yes, sir.

2 Q -- in your custody at the prison; is that right?

3 A Yes.

4 Q Do they remain -- or does it remain part of your
5 responsibility to ensure their safety when they're outside
6 the prison?

7 A Of course.

8 Q So during this medical escort trip, when you were
9 exiting St. Mary's Hospital, did you take any steps to
10 protect Brandon Lemagne and your fellow officers?

11 A Yes, I did.

12 Q What did you do?

13 A When we left the actual -- going through the hospital
14 and going out to the parking lot, you have to scan to make
15 sure that there was no -- nobody going to ambush us, you
16 know, at that point.

17 Q Did you screen your fellow officers --

18 MR. GAVIN: Objection to the relevance.

19 THE COURT: What's the relevance of this?

20 MR. GARNETT: Your Honor, he's been a
21 correctional officer for ten years. His level of concern
22 as to what he had observed I think is relevant to --

23 THE COURT: Well, that goes to his mindset. I'm
24 going to sustain the objection. It's stricken. Let's not
25 go into this. Let's just go into what he saw.

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1 MR. GARNETT: Understood, Your Honor.

2 BY MR. GARNETT:

3 Q Did you, in fact, return Brandon Lemagne to FCI

4 Petersburg?

5 A I did.

6 Q Okay.

7 MR. GARNETT: Those are all the questions I

8 have, Your Honor.

9 THE COURT: Any cross?

10 MR. GAVIN: Yes, sir.

11 **CROSS-EXAMINATION**

12 BY MR. GAVIN:

13 Q Good afternoon, Officer.

14 A Hey. How you doing?

15 MR. GAVIN: Ms. Taylor, could you pull up 5-B

16 for the government?

17 BY MR. GAVIN:

18 Q Do you recognize that area --

19 A I sure do.

20 Q -- Officer McLaughlin?

21 A Yes, I do.

22 Q All right. So the area right by the shrubs, is that

23 the sidewalk where you were walking Mr. Brandon Lemagne?

24 A Yes. That would be where we would turn at.

25 Q So the building way in the back that has F-South, can

1 you circle that on the screen?

2 A Yes.

3 Q All right. So you're saying that the voice you heard
4 came from that area?

5 A Yes.

6 Q But you don't know who it was?

7 A Because of who was working there -- Officer Legins
8 has a distinctive way he voices things, as far as where
9 he's from. He's from, what I would assume, in the New
10 York area, you know. That's how you can kind of tell of
11 who is speaking. But like I said, I did not see him
12 actually say it so I am not 100 percent, but I'm high up
13 there in the percentage it was him.

14 Q All right. So you were walking side by side with
15 Mr. Lemagne, correct?

16 A No. He's in front of me. I'm behind him.

17 Q How far is he in front of you?

18 A I would say maybe -- maybe about a foot.

19 What's going on is I'm actually holding him. So
20 he's still -- you know, he's still in custody. So I'm
21 holding him, but I'm like a step behind as I'm holding
22 him.

23 Q So you were close enough to hear everything that he
24 would have heard?

25 A Yes.

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1 Q Did you ever hear anything that sounded like, "Don't
2 believe that guy"?

3 A I didn't hear that part of it. But when he did yell
4 out, or whoever yelled out at that point, which I'm pretty
5 sure I'm not too far off, I told Inmate Lemagne at that
6 time to look to the left of the building and look straight
7 ahead of him. Do not look to the right.

8 Q All right. So was there only the one voice that you
9 heard that one time? There weren't multiple yellings,
10 just the one, correct?

11 A There were not multiple yellings from what I heard.
12 There was one voice.

13 Q All right. Could I ask you to take a look at this?

14 MR. GAVIN: Judge, I'm going to mark this as
15 Defendant's 16?

16 THE COURT: Okay.

17 BY MR. GAVIN:

18 Q I think this -- well, first of all, do you recognize
19 that?

20 A Yes.

21 Q Is that a report that you generated?

22 A That would be a report I generated.

23 Q And to whom was it addressed?

24 A As far as to all concerned.

25 Q All concerned. So who would have been the all

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1 concerned? Who would have gotten copies of this report?

2 A All concerned would have been our lieutenants.

3 Q So all -- everybody --

4 A Or captains.

5 Q Everybody that's above you, lieutenants, captains.

6 Everybody would receive this report?

7 A Yes.

8 Q All right. And this report was generated after you

9 had taken Mr. Legins(sic) to the hospital, correct?

10 A Yes.

11 Q All right. By that time, were you aware that

12 Mr. Lemagne was accusing Mr. Legins of what happened?

13 A I wasn't 100 percent sure on anything at that point.

14 Q All right. So --

15 A I had speculations because of what the phone calls

16 were and what had transpired at that point because that's

17 out of the ordinary for somebody to yell across the

18 compound and then call like that after something has

19 happened like that. And when Lemagne said staff and then

20 you put everything together, you kind of figure out what's

21 going on.

22 Q Are there cameras on the compound?

23 A Yes, there are.

24 Q Are there cameras that reflect entry and exit to the

25 compound office?

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1 A Yes.

2 Q Are there cameras on the buildings?

3 A Yes, there are.

4 Q On the unit buildings?

5 A Yes.

6 Q So there's cameras on the corner of the building Fox

7 South --

8 A Uh-huh.

9 Q -- and Fox North?

10 A Yes.

11 Q I highlighted something in this document that you
12 wrote. It's right in front of you.

13 A Yes.

14 Q Do you see that?

15 A Yes. It says, "I couldn't" -- "I could not make out
16 what is being said at the time" -- "what is being said."

17 Q "I couldn't make out what was being said." That's
18 what you said?

19 A Yes.

20 Q And that's what you reported to all your lieutenants
21 and all your captains?

22 A Yes.

23 MR. GAVIN: Judge, I'd like to move that as
24 my 15(sic).

25 THE COURT: Any objection?

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1 MR. GARNETT: No objection, Your Honor.

2 THE COURT: All right. Admitted.

3 (Defendant Exhibit Number 16 was admitted.)

4 MR. GAVIN: I have no other questions.

5 THE COURT: Any redirect?

6 MR. GARNETT: No, Your Honor.

7 THE COURT: All right. Officer, thank you so
8 much for your testimony. You can step down. I'm going to
9 instruct you not to talk about your testimony with anybody
10 until this trial is over. Okay?

11 THE WITNESS: Correct.

12 THE COURT: All right. Thank you.

13 (Witness stood aside.)

14 THE COURT: Do you want to call your next
15 witness?

16 MR. GARNETT: Yes, sir. We'd call Special Agent
17 Johnny Lavender, Judge.

18 THE COURT: This is the last time he's
19 testifying, right?

20 MR. GARNETT: Yes, sir.

21 THE COURT: You're not going to call him a third
22 time is what I'm telling you.

23 MR. GARNETT: No.

24 THE COURT: I'll give you twice, but I'm not
25 giving you three times.

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1 All right. Special Agent Lavender, you've been
2 sworn before. You're still under oath. Do you understand
3 that?

4 SPECIAL AGENT LAVENDER: Yes, Your Honor.

5 THE COURT: Just state your full name and spell
6 your last name one more time.

7 SPECIAL AGENT LAVENDER: Johnny Lavender,
8 L-A-V-E-N-D-E-R.

9 THE COURT: All right, Mr. Garnett.

10 MR. GARNETT: Thank you, Your Honor.

11 **JOHNNY LAVENDER,**

12 called by the government, first being duly sworn,
13 testified as follows:

14 **DIRECT EXAMINATION**

15 BY MR. GARNETT:

16 Q Agent Lavender, during your investigation, did you
17 interview the defendant, Chikosi Legins?

18 A Yes.

19 Q Did you interview him on June 5th of 2018?

20 A Yes, I did.

21 Q And where did that interview take place?

22 A FCI Petersburg Medium.

23 THE COURT: What was that date? I'm sorry.

24 MR. GARNETT: I'm sorry, Judge?

25 THE COURT: When was the interview?

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1 MR. GARNETT: June 5th, Judge, was the witness'
2 response.

3 THE COURT: Of this year or last year?

4 MR. GARNETT: 2018, Judge.

5 THE COURT: Go ahead, Mr. Garnett.

6 BY MR. GARNETT:

7 Q Was that interview audio recorded?

8 A Yes, it was.

9 Q And have you subsequently reviewed the audio
10 recording of that June 5th interview?

11 A Yes, I have.

12 Q Was the recording an accurate and complete recording
13 of that June 5th interview?

14 A Yes, it was. With one note that my name was
15 misspelled. The last letter is an E instead of an A.

16 Q With the exception of your last name, was it an
17 accurate and complete recording, then?

18 A Yes.

19 MR. GARNETT: Your Honor, I would move at this
20 point to introduce Government Exhibit 20.

21 THE COURT: No objection; is that correct?

22 MR. GAVIN: No, sir.

23 THE COURT: All right. It will be admitted.

24 (Government Exhibit Number 20 was admitted.)

25 BY MR. GARNETT:

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1 Q Agent Lavender, did you also review a transcript of
2 that recording?

3 A Yes, I did.

4 Q And did you compare that transcript to the audio
5 recording that you listened to?

6 A Yes, I did.

7 Q And was that transcript a complete and accurate
8 transcription of the June 5th interview?

9 A Yes, it is.

10 MR. GARNETT: Your Honor, at this point I move
11 to introduce Government Exhibit 20-A only for
12 demonstrative --

13 THE COURT: As an aid; is that right?

14 MR. GARNETT: I'm sorry?

15 THE COURT: You're only using the transcript as
16 an aid.

17 MR. GARNETT: That's right, Judge. Just as an
18 aid for the jury.

19 THE COURT: All right. So it's not admitted
20 into evidence. It's just an aid for the jury.

21 MR. GARNETT: Yes, sir.

22 THE COURT: Are you going to ask that it be
23 distributed to the members of the jury?

24 MR. GARNETT: Judge, what we're planning to do
25 is actually play the audio clip. As that plays, the

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1 jurors will be able to see the transcript scrolling and
2 sync with the audio.

3 THE COURT: That's fine.

4 So, folks, what we're going to do -- you just
5 heard Mr. Garnett say they're going to play the audio, but
6 at the same time, if our tech works, you're going to get
7 to see the transcript going on.

8 What I'm telling you, though, is the actual
9 evidence is the recording, not the words that you see on
10 the screen. The words are there just to help you see
11 what's going on, but the true evidence that you weigh is
12 what you hear on the recording. Does everybody understand
13 that? All right.

14 MR. GAVIN: Judge, if I may. I think there's
15 some excerpts from the recording.

16 THE COURT: Okay.

17 MR. GAVIN: And I think that the way the
18 government has done it is to highlight the portions that
19 are going to be read but not highlight the portions that
20 are not going to be read. So I would just ask the Court
21 to instruct the jury that the unhighlighted portions
22 shouldn't be considered, then, because they are not aiding
23 at all the transcript. The transcript is narrowed down.

24 THE COURT: All right. Do you agree with that
25 assessment?

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1 MR. GARNETT: I do, Judge. And I think the way
2 this is set up -- and I think the Court will see it here
3 in a second -- Mr. Gavin as well -- you really can only
4 see the portion that's being played. So there's not --
5 the jury doesn't have the option or the ability to scroll
6 below what's actually being played.

7 THE COURT: All right. Folks, you just heard
8 what they said. The key is what you hear. Whatever the
9 portion is, focus on what you're listening to. That's the
10 key point. All right? Are you ready to roll?

11 MR. GARNETT: Yes, Judge.

12 THE COURT: All right.

13 BY MR. GARNETT:

14 Q Agent Lavender, were there any other individuals
15 present during this interview?

16 A Yes, there were.

17 Q And who was there?

18 A Special Agent from DOJ OIG Orloff, and Mr. Legins,
19 and a representative from the union for Mr. Legins.

20 Q Was the defendant in custody during this interview?

21 A No, he was not in custody.

22 Q Was he informed that the interview was entirely
23 voluntary?

24 A Yes, he was.

25 Q And was the defendant advised throughout the

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1 interview of the consequences of providing false
2 information to federal law enforcement officers?

3 A Numerous times.

4 Q So we're going to play portions of that recording,
5 Agent Lavender, and the jurors will be able to follow
6 along on that corresponding transcript.

7 THE COURT: Well, before you do that. What
8 exactly did you tell him about what are the consequences
9 for somebody that gives false information to a federal
10 agent?

11 THE WITNESS: We went over the false statements,
12 the 1001 charge at least four to five times with him.

13 THE COURT: Okay. And I know what you're
14 talking about, but they don't. So I need you to explain
15 what it is that you told him precisely about the
16 consequences of not saying something truthful to a federal
17 agent.

18 THE WITNESS: Yes, Your Honor. We explained to
19 Mr. Legins that honesty was paramount and that if he lied
20 to us during the course of this interview, that he could
21 face additional charges, meaning a 1001 charge, which is
22 providing a false statement to myself.

23 THE COURT: Okay. Thank you.

24 BY MR. GARNETT:

25 Q And was the defendant placed under oath at the

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1 beginning of the interview?

2 A Yes.

3 Q At the beginning of this interview, Agent Lavender,
4 was the defendant asked whether he knew the victim,
5 Brandon Lemagne?

6 A Yes.

7 Q And did the defendant say anything about whether he
8 knew anything about Brandon Lemagne's sexual identity?

9 A Yes. He described him as being transgender.

10 Q And how did the defendant describe his views as to
11 the transgender community at Petersburg?

12 A He saw them as potential victims.

13 Q Did the defendant describe his relationship with
14 Brandon Lemagne as encompassing only conversation?

15 A First, he said he had no relationship, and then
16 stated that it was a purely -- just conversations.

17 THE COURT: Well, are you going to play it?

18 MR. GARNETT: I am, Your Honor. I'm just moving
19 us up to the spot where we're going to play it. We don't
20 want to play the entire recording, Your Honor. It's quite
21 lengthy.

22 THE COURT: Right.

23 MR. GARNETT: So I'm trying to play excerpts.
24 And so I'm leading the jury up to the excerpt.

25 THE COURT: Okay. I mean, the defendant's words

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1 is what controls here.

2 MR. GARNETT: Yes, Your Honor.

3 THE COURT: Instead of him summarizing, I'd

4 rather have you just play the relevant areas. Okay?

5 MR. GARNETT: Yes, Your Honor.

6 Ms. Taylor, can we play audio clip 3?

7 (The following transcript is an excerpt from the
8 video transcribed by Deposition Services, Inc.):

9 "MR. ORLOFF: Great. Great. Okay. Well, we're
10 here to discuss activities that you had with
11 Brandon Lemagne. Is that name familiar to you?

12 MR. LEGINS: It is.

13 MR. ORLOFF: Okay. I have a picture of him,
14 just to, so you, in case you need to, like, a
15 recollection of what he looks like.

16 MR. LEGINS: Mm-hmm.

17 MR. ORLOFF: When do you first remember meeting
18 Mr. Lemagne?

19 MR. LEGINS: I don't remember when I, um, I
20 don't remember when I officially met him. I
21 remember seeing him, you know. But I don't
22 remember. I was, I don't remember the exact
23 time I met him. I'm sorry.

24 MR. ORLOFF: Like, early on, you said you
25 started about 2014 here?

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1 MR. LEGINS: I started in 2014. But I don't
2 remember when, exactly, he popped on the scene.

3 MR. ORLOFF: Okay.

4 MR. LEGINS: You know, I, like I said, I do a
5 lot of overtime. I see a lot of people. I
6 didn't really pay attention to him.

7 MR. ORLOFF: Okay. What type of relationship
8 did you have with Lemagne?

9 MR. LEGINS: I didn't have a relationship with
10 him.

11 MR. ORLOFF: Mm-hmm.

12 MR. LEGINS: I, um, he's a transgender inmate. I
13 tried to make the transgender inmates or/and the
14 homosexual inmates understand that, you know,
15 they can have somebody to talk to. So I
16 socialize. You know, good morning, how are you
17 doing. You know, like that. You know, small,
18 casual, professional conversations. So that
19 they know it -- because I see them as potential
20 victims, perhaps.

21 MR. ORLOFF: Okay.

22 MR. LEGINS: You know. And I think that was
23 probably my downfall getting, you know, too --

24 MR. ORLOFF: Yeah.

25 MR. LEGINS: -- talkative too much. But the

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1 reason for that is because I have experience.

2 Well, my son is homosexual. He chose the

3 homosexual life, despite our religion. And I

4 think because of that I try to treat everyone

5 the way I want someone to treat my son, so.

6 MR. ORLOFF: And I mean, was it known that he's

7 in -- like, how do you know --

8 MR. LEGINS: He's --

9 MR. ORLOFF: -- if --

10 MR. LEGINS: -- a transgender?

11 MR. ORLOFF: -- he's homosexual or transgender?

12 Is it like they --

13 MR. LEGINS: All right. It's, you know, you can

14 pretty much see it on him. And then --

15 MR. ORLOFF: Yeah.

16 MR. LEGINS: -- he didn't hide it. You know,

17 and, uh, like most of the transgender, they try

18 to wear clothing that's just not really

19 appropriate. You know? Which makes them

20 potential victims, to everybody else. But, you

21 know, that, you know, he didn't -- and then he

22 never really hid the fact that he, you know,

23 chose the homosexual lifestyle."

24 (End of transcript.)

25 MR. GARNETT: Ms. Taylor, can we go ahead and

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1 play clip 5?

2 MS. TAYLOR: Five?

3 MR. GARNETT: Yes, please.

4 BY MR. GARNETT:

5 Q Actually, before we start playing this, at this point
6 in the interview had the defendant been cautioned again
7 about the 1001 false statements you referenced, the
8 consequences of providing false information to federal
9 agents?

10 A Yes.

11 MR. GARNETT: You can go ahead and play it,
12 Ms. Taylor.

13 (The following transcript is an excerpt from the
14 video transcribed by Deposition Services, Inc.):
15 MR. LEGINS: So, I don't, I don't lie. There's
16 no need to lie. What happened was, I went into
17 the Fox-South. I entered through the Fox-South.
18 I did stop at unit team and made an attempt to
19 log onto the system. The system was taking too
20 long to log on. It wouldn't allow me to put in
21 my PIN number. I learned later that the numbers
22 lock was on, which is why it wasn't doing it.
23 But in any case, it was taking too long. I
24 pulled the card out. Locked the door back, and
25 escorted the inmate to the north side, where I

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1 told the officer that he was on the unit. And I
2 left him there. That's it. Besides
3 conversation, there was nothing else that went
4 on in that office.

5 MR. ORLOFF: Explain to me why you would do that
6 while he's in there?

7 MR. LEGINS: You know --

8 MR. ORLOFF: Well, you have day to --

9 MR. LEGINS: Yeah.

10 MR. ORLOFF: -- open these --

11 MR. LEGINS: It was just to --

12 MR. ORLOFF: -- doors and do things yourself.

13 MR. LEGINS: -- complacency. And I was rushing.

14 And I just thought I'd do more than -- you know,
15 I'd just multitask. But I've never, in --

16 actually, that day on the 10th, I had just found
17 out earlier that day that I had -- the surgery
18 was successful as far as removing the cancer in
19 my jaw, and that radiation treatment was soon to
20 start. I was over-happy about that. I was just
21 on a high.

22 I never would've done that under any other
23 circumstances. Never have done that on any
24 other circumstances. It was just, I wasn't
25 thinking. I fell to complacency. Um, and I

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1 never will do that again. But that was straight
2 complacency.

3 I thought I would multitask. I thought I would
4 do, you know, I thought I could log on and while
5 it's logging on, take him to the north side. By
6 the time I come back, I'm up. I print the
7 documents, and I move out. Mind you, the whole
8 time that's going on I have a day room full of
9 inmates. I have a day room full of inmates.

10 MR. ORLOFF: So here are pictures of the room.

11 MR. LEGINS: Okay?

12 MR. ORLOFF: So you're telling me you came into
13 this room.

14 MR. LEGINS: Uh-huh.

15 MR. ORLOFF: Usually someone's here during the
16 day, right?

17 MR. LEGINS: Yes.

18 MR. ORLOFF: Okay. So this person's gone for the
19 day?

20 MR. LEGINS: Uh-huh.

21 MR. ORLOFF: So, where is this printer that you
22 were trying -- you were trying to log onto this
23 system?

24 MR. LEGINS: Right. So, that's the computer, of
25 course, you see. And the little PIV card thing

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1 is right there. The printer, itself, is right
2 there. And that's the only printer we have in
3 the unit.

4 MR. ORLOFF: Okay. Where's Lemagne during this
5 whole time?

6 MR. LEGINS: We're talking and joking. And
7 he's, like, walking around this area right here.
8 And just talking about the unit, itself. He's
9 not out of sight.

10 MR. ORLOFF: Here's --

11 MR. LEGINS: I kept sight --

12 MR. ORLOFF: -- another picture.

13 MR. LEGINS: -- on him the whole time.

14 Yeah. So, he was walking, you know. We, I'm
15 right here. And I'm trying to log onto the PIV.
16 That's the card, right there. And he's just
17 walking around. I didn't really pay no real
18 attention to him, because we're talking and I'm,
19 once again, complacent and stupid. And he's
20 just walking around. He's just, he's not doing
21 -- he didn't leave my sight. He didn't go
22 anywhere that made me say, hey, what are you
23 doing.

24 MR. ORLOFF: Okay. So you're telling me, you're
25 telling us, there is nothing, no sexual activity

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1 that occurred in that room?

2 MR. LEGINS: There was no sexual activity that
3 occurred in that room.

4 MR. ORLOFF: Okay. And you're going to keep to
5 that statement? There is absolutely 100 percent
6 no sexual activity that happened in that room
7 May 10th between 6:09 and 6:16 p.m.?

8 MR. LEGINS: Nothing concerning me. Nothing
9 concerning me.

10 MR. ORLOFF: Okay."

11 (End of transcript.)

12 MR. GARNETT: Ms. Taylor, if we could please
13 play tape 6, and could you pause at page 33, line 7?

14 (The following transcript is an excerpt from the
15 video transcribed by Deposition Services, Inc.):

16 "MR. ORLOFF: And you're telling me there was no
17 sexual activity. On the other hand, um -- why
18 don't we get into that sexual activity. So, did
19 you move Lemagne to the corner of this room,
20 grab him, move him to the corner of this room,
21 right here?

22 MR. LEGINS: I didn't grab him at all. And no,
23 I didn't move him to any part of the room. My
24 focus was that computer. And then after that
25 computer we moved out.

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1 MR. ORLOFF: What were you trying to print,
2 again?

3 MR. LEGINS: Copouts. It's an inmate request
4 form. You know, they -- a couple of people in
5 the unit needed it. They didn't have it. After
6 that, after I didn't, wasn't able to print it
7 out, I just simply went to the north side. Went
8 and talked to the officer. I noticed he had
9 some. Took some of his. Gave them to my
10 inmates.

11 Let me also, um, let me also tell you, another
12 reason why it's impossible for me to have done
13 it is I suffer from a multitude -- I mean, I
14 know I look healthy. But I suffer from a
15 multitude of illnesses. One of them, for years
16 now, is erectile dysfunction. I not only cannot
17 get a hard-on without medications, but I have no
18 sexual desire. And that's all in my records.
19 You know, I've been dealing with this for at
20 least six years, five, six years. I take a
21 series of medications in an attempt to help me.
22 Everything from testosterone replacement therapy
23 to, to everything. You know, so without the
24 medication, I won't even get an erection, let
25 alone wanting to have sex.

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1 You know, I just -- and then, you know, with
2 everything going on, under normal circumstances,
3 I don't think sex is something that be on my
4 mind. You know, right now what's on my mind is
5 I may not live the next 10 years. You know?
6 That's what's on my mind not -- and how can I
7 prepare my family. Not having sex with a man.
8 You know? I have nothing against the
9 transgender/homosexual community. Like I said,
10 my -- I have nothing against it. It's just that
11 that's not me. That's not me.

12 MR. ORLOFF: Okay. So you did not manipulate,
13 force, or move him to the corner of the room at
14 any point?

15 MR. LEGINS: No.

16 MR. ORLOFF: Was he trying to leave, at any
17 point?

18 MR. LEGINS: He could've left any time he wanted
19 to leave. I wasn't blocking the door or
20 stopping him from going anywhere.

21 MR. ORLOFF: Okay.

22 MR. LEGINS: We wasn't --

23 MR. ORLOFF: How big are you? What's your
24 height and weight?

25 MR. LEGINS: 6'4". I was 370. I'm 328 now.

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1 MR. ORLOFF: Big guy.

2 MR. LEGINS: Yes.

3 MR. ORLOFF: What is, what's his, about,

4 height/weight?

5 MR. LEGINS: Probably about, I don't know, 5'7".

6 Um, maybe 190 pounds. I don't know.

7 MR. ORLOFF: Okay. Um, do you recall ever

8 saying to him, what's up, squat?

9 MR. LEGINS: No. There was no conversation

10 about squatting, you know. I probably said,

11 what's up when I first seen him. But there was

12 never a conversation about squatting. Nothing

13 dealing with squat, bent, none of that.

14 That's --

15 MR. ORLOFF: Okay. So you never made Lemagne --

16 you never forced Lemagne to perform oral sex on

17 your penis?

18 MR. LEGINS: No. Did -- no.

19 MR. LAVENDAR: Can I clarify that a little?

20 MR. ORLOFF: Yeah, go ahead.

21 MR. LAVENDAR: Because asking a good question,

22 so I didn't want to interrupt. But the question

23 was did you ever force him. Did you ever have

24 any consensual sex --

25 MR. LEGINS: No --

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1 MR. LAVENDAR: -- with --

2 MR. LEGINS: -- consensual sex with Mr. Lemagne.

3 MR. LAVENDAR: -- with him --

4 MR. LEGINS: With no --

5 MR. LAVENDAR: -- or anyone else --

6 MR. LEGINS: -- with no one.

7 MR. LAVENDAR: -- in this prison?

8 MR. LEGINS: In this prison, at all. No one.

9 MR. LAVENDAR: Okay. Consensual or forced?

10 MR. LEGINS: Or forced, yes.

11 MR. LAVENDAR: Okay.

12 MR. ORLOFF: Yeah, thanks for clarifying.

13 MR. LEGINS: Mm-hmm.

14 MR. ORLOFF: So no consensual anything, you're
15 saying?

16 MR. LEGINS: Nothing."

17 (End of transcript.)

18 BY MR. GARNETT:

19 Q At this point in the interview did the defendant
20 explain precisely how he had tried to log into his BOP
21 computer account in the unit team office?

22 A Yes, he did.

23 MR. GARNETT: You can go ahead and play it,
24 Ms. Taylor.

25 (The following transcript is an excerpt from the

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1 video transcribed by Deposition Services, Inc.:)

2 "MR. LAVENDAR: So, with that statement, again,

3 with what you're telling us now, you're telling

4 -- and you're telling us that on that day,

5 you've explained that you went into that room to

6 try to print off on the printer. You tried to

7 log into the printer, am I correct?

8 MR. LEGINS: Yes, I did.

9 MR. LAVENDAR: Okay.

10 MR. LEGINS: And to the machine.

11 MR. LAVENDAR: To the machine.

12 MR. LEGINS: The computer.

13 MR. LAVENDAR: Okay. If I -- do you recall, how

14 many times did you try to log on? Is it

15 multiple times? One time?

16 MR. LEGINS: No, just once.

17 MR. LAVENDAR: Okay.

18 MR. LEGINS: I was trying to put the PIN in, but

19 it wasn't going in. It was taking long.

20 MR. LAVENDAR: Is there a PIN issued to you, or

21 just in general for all the --

22 MR. LEGINS: Just, we all have our individual

23 PINs.

24 MR. LAVENDAR: Okay.

25 MR. LEGINS: Yeah.

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1 MR. LAVENDAR: And when you were entering it,
2 what was said? Because I don't know. Sometimes
3 -- I'm not a computer guy. So --

4 MR. LEGINS: Mm-hmm.

5 MR. LAVENDAR: -- please understand I'm not
6 trying to --

7 MR. LEGINS: That's okay.

8 MR. LAVENDAR: But when you tried to enter the
9 PIN, did it say, invalid PIN? Uh, what did it
10 say?

11 MR. LEGINS: Nothing. There wasn't, the, so you
12 know on the right-hand side you have the number
13 lock.

14 MR. LAVENDAR: Right.

15 MR. LEGINS: So I'm trying to push my PIN in.
16 And it's not, not going in.

17 MR. LAVENDAR: So the numbers never were in it,
18 so.

19 MR. LEGINS: Right, because --

20 MR. LAVENDAR: Okay.

21 MR. LEGINS: -- the number lock was, I found out
22 later on, the number lock was on. You know what
23 I mean? But um, I believe, yeah, it had to be
24 the numbers lock. But it was just taking too
25 long. And --

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1 MR. LAVENDAR: Okay.

2 MR. LEGINS: -- we just moved out. Now, mind
3 you, on both sides I have everyone out. We have
4 an officer on the north side. We have -- who
5 routinely go back and forth. Who routinely
6 uses, you know, that area as well, because the
7 restroom was in there. There's no way that that
8 would've been a suitable spot to do anything
9 sexual with so many people moving around and
10 walking around and so much going on. It's not a
11 dead area. It's a very active area.

12 MR. LAVENDAR: Okay.

13 MR. LEGINS: You know what I mean?

14 MR. LAVENDAR: So it's an active area you were
15 going through. You're saying you put your
16 numbers in. But it -- because sometimes, like,
17 my computer when I work, if I type in the wrong
18 number it will tell me, you did something wrong.
19 And there's --

20 MR. LEGINS: Mm-hmm.

21 MR. LAVENDAR: -- and it tells me I entered an
22 incorrect number. You're saying you never got
23 to that point.

24 MR. LEGINS: I said --

25 MR. LAVENDAR: And just, you're just hitting and

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1 nothing was coming up?

2 MR. LEGINS: Well, so once you put in your BOP
3 number then it requests for your PIN number.

4 MR. LAVENDAR: Did you put your BOP number in?

5 MR. LEGINS: I put the BOP number in.

6 MR. LAVENDAR: You put your BOP number in.

7 MR. LEGINS: Right. The PIN number, like I
8 said, it wasn't --

9 MR. LAVENDAR: Okay. So you got to the point
10 where you entered your BOP number?

11 MR. LEGINS: Right.

12 MR. LAVENDAR: And then your PIN, you were not
13 able to enter?

14 MR. LEGINS: Right.

15 MR. LAVENDAR: Because the number locks were on?

16 MR. LEGINS: I believe the number lock was on.

17 MR. LAVENDAR: Okay. That's what you had said.

18 MR. LEGINS: Yeah.

19 MR. LAVENDAR: Okay.

20 MR. LEGINS: When I thought about it. Yeah.

21 MR. LAVENDAR: And you're saying that at no
22 point during that, uh, that time period, or in
23 general, you said, at all, but specifically that
24 time period, there was no interaction between
25 you and the inmate, sexually?

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1 MR. LEGINS: Just -- nothing sexual.

2 MR. LAVENDAR: Just conversation.

3 MR. LEGINS: Yeah, just conversation.

4 MR. LAVENDAR: Just straight conversation. And
5 when I say sexual, oral, any type of, you know,
6 anal, any type of sexual interaction?

7 MR. LEGINS: Mm-hmm?

8 MR. LAVENDAR: And we were specifically
9 mentioning that day on May 10th.

10 MR. LEGINS: Mm-hmm?

11 MR. LAVENDAR: But you made the statement, to
12 make sure I'm clear, there has been no sexual
13 contact between you and any inmate during your
14 time period at this institution?

15 MR. LEGINS: That's right.

16 MR. LAVENDAR: Okay.

17 MR. LEGINS: That's right.

18 MR. ORLOFF: You have a printer in your office
19 outside this little walkthrough, correct?

20 MR. LEGINS: That's the only printer.

21 MR. ORLOFF: That's the only printer?

22 MR. LEGINS: Mm-hmm. That's the only one for
23 the whole Fox unit. There's no other printer."

24 (End of transcript.)

25 MR. GARNETT: You can stop it there, Ms. Taylor.

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1 Thank you.

2 BY MR. GARNETT:

3 Q Agent Lavender, have you reviewed the video
4 surveillance footage in this case?

5 A I have.

6 Q In reviewing the footage of May 10th, at any point do
7 you see the defendant approach another correctional
8 officer and retrieve paperwork from him?

9 A I did not.

10 MR. GARNETT: Ms. Taylor, can we go ahead and
11 play clip 7?

12 (The following transcript is an excerpt from the
13 video transcribed by Deposition Services, Inc.):
14 "MR. ORLOFF: All right. Let's go to a previous
15 incident. And that's the thing. If this
16 wasn't -- if this was the only incident, but
17 it's not, right. There's another incident on
18 March 16th. Basically, a sexual encounter took
19 place between you and Lemagne on Friday, March
20 16th, on an elevator between F-South and
21 F-North. So you see here, that's the, you know
22 where the elevator is, right?

23 MR. LEGINS: Yeah.

24 MR. ORLOFF: You come in here.

25 MR. LEGINS: Uh-huh.

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1 MR. ORLOFF: Do you remember ever bringing him
2 on an elevator?

3 MR. LEGINS: No, I do not. I do not. March
4 16th? That's way back there. I don't --

5 MR. ORLOFF: It's about three months ago.

6 MR. LEGINS: There's no way to remember that.
7 I know that I was never on an elevator alone
8 with him, if that's the question. If, for some
9 reason, he needed to go down to a lower level,
10 it was never uneasy for me to notify the bottom
11 rangers that he was going, someone was coming
12 down the elevator. I would've allowed him to
13 use the elevator going down. But I would've
14 never put him on an elevator with me. I wasn't
15 in an elevator with him.

16 MR. ORLOFF: So you've never been alone with
17 Lemagne on an elevator?

18 MR. LEGINS: No, I have not. I have not. No.
19 And it, it's only been very few times that I
20 even escorted him from one side to another. You
21 know, there's been other times when I escorted
22 him from one end to the other. I don't know why
23 he picked this time to be, you know. But it was
24 never a situation. I got complacent. I
25 would've never, you know.

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1 That's not uncommon for us to escort inmates
2 from one side to the other. I just never
3 assumed that, you know, he would make an
4 accusation like that. I didn't even see that
5 coming.

6 MR. ORLOFF: So, on March 16th, you're saying
7 that Lemagne never performed oral sex on your
8 penis?

9 MR. LEGINS: No, he did not.

10 MR. ORLOFF: Even consensual?

11 MR. LEGINS: No sexual acts, at all."

12 (End of transcript.)

13 MR. GARNETT: Ms. Taylor, if we could actually
14 go back to page 6. I apologize. I think I actually cut
15 things off. And if we could fast-forward to page 38,
16 line 21.

17 THE COURT: You can replay it if -- I don't want
18 to mess up the computer again.

19 MS. TAYLOR: That's okay. We're okay.

20 MR. GARNETT: If we can get to page 38, line 20.
21 I apologize, Your Honor. I got lost in my notes
22 there.

23 THE COURT: That's fine.

24 (The following transcript is an excerpt from the
25 video transcribed by Deposition Services, Inc.:)

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1 "MR. LAVENDAR: And any inmate during your time
2 period at this institution?

3 MR. LEGINS: That's right.

4 MR. LAVENDAR: Okay.

5 MR. LEGINS: That's right.

6 MR. ORLOFF: You have a printer in your office
7 outside this little walkthrough, correct?

8 MR. LEGINS: That's the only printer.

9 MR. ORLOFF: That's the only printer?

10 MR. LEGINS: Mm-hmm. That's the only one for
11 the whole Fox unit. There's no other printer.

12 MR. ORLOFF: So, right out here, you come
13 through here. There's that little board. And
14 you have your office.

15 MR. LEGINS: Right.

16 MR. ORLOFF: Is your printer in that office?

17 MR. LEGINS: No, it's not.

18 MR. ORLOFF: Okay. So let's get back to that May
19 10, 2018. You said you'd not, uh, Lemagne did
20 not perform oral sex on your penis. Did you
21 ever try to pull Lemagne's pants down?

22 MR. LEGINS: Never.

23 MR. ORLOFF: Did you spit on your hand and
24 penetrate Lemagne's anus with your fingers?

25 MR. LEGINS: No, I did not.

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1 MR. ORLOFF: Did you penetrate Lemagne's anus
2 with your penis?

3 MR. LEGINS: I did not.

4 MR. ORLOFF: Did you ejaculate?

5 MR. LEGINS: I -- no, I did not.

6 MR. ORLOFF: So, if there's semen found in this
7 room, or on clothing, or on Lemagne, how would
8 you explain that?

9 MR. LEGINS: I wouldn't be able to explain that.

10 It -- I wouldn't be able to explain it."

11 (End of transcript.)

12 BY MR. GARNETT:

13 Q At this point did the defendant then offer an
14 explanation for why his semen might have been present at
15 the prison?

16 A Yes.

17 MR. GARNETT: Ms. Taylor, can we go ahead and
18 play clip 8 at this point?

19 (The following transcript is an excerpt from the
20 video transcribed by Deposition Services, Inc.):

21 "MR. ORLOFF: Again, if there's evidence or
22 semen on clothing --

23 MR. LEGINS: Why --

24 MR. ORLOFF: -- what would be your explanation?

25 MR. LEGINS: Not --

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1 MR. ORLOFF: If you said, hey, Steve, it was
2 consensual, I made a mistake, I didn't force
3 him, I didn't block him from leaving the
4 elevator, like, okay. But I mean, the evidence
5 is not going to lie. So --

6 MR. LEGINS: I understand.

7 MR. ORLOFF: -- and like I said earlier, like,
8 if you're honest with us and we leave here
9 today, and we go back to, you know, the guy
10 actually was truthful with us, instead of the
11 18 U.S.C. 1001 where, if the evidence comes back
12 and today you've been lying about everything,
13 false statements to federal investigators, I
14 mean, they're not going to give you the benefit
15 of the doubt.

16 MR. LEGINS: I understand.

17 MR. ORLOFF: So, I mean, if you need to clarify
18 anything, like, now is the time to do it. And,
19 and, listen, I know you're going through a lot.
20 I know.

21 MR. LEGINS: The only -- there was nothing with
22 Lemagne. There was not sexual activity with
23 him. There was never a time when I engaged in
24 any sexual acts with Lemagne.
25 So, I've been dealing with cancer for a while.

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1 I've been stressed out. I've been ignoring my
2 family. I've been ignoring my wife. As I said
3 previously, I, I, uh, take medication for an
4 erection. I haven't been intimate with my wife
5 in some time since then. In fact, my wife, my
6 family didn't even know I had cancer. They
7 didn't know until the surgery.

8 On the 9th, which was my first day back to work
9 prior to my, uh, me finding out the conclusion
10 of the, of the thing, I had taken some
11 medication in hopes to have sex with my wife
12 before I came to work. I wanted to surprise
13 her. Did the house up real nice. I wanted to
14 surprise her. She was on her cycle.

15 I came to work. The medication has me get an
16 erections. Okay? So, I didn't want to get an
17 erection around inmates. So, later on that day,
18 on the 9th, not the 10th, or no other time
19 before that, I did go in the bathroom and
20 relieve myself. Because, like I said, I kept
21 getting an erection. That's the only time that
22 I've ever done anything like that, but I had to
23 do it because it kept giving me erections while
24 I was dealing with other inmates. And I
25 didn't -- that's not cool. That's it.

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1 MR. ORLOFF: So, what, would it be in this
2 bathroom? In --

3 MR. LEGINS: It would --

4 MR. ORLOFF: -- that office?

5 MR. LEGINS: -- yeah, that's the only bathroom
6 up there. So, that's the only. And then I
7 clean up after myself. And then the detail from
8 the north side goes in the next day and cleans
9 it, too, so. That's it. That's, there is no
10 other way. There is nothing."

11 (End of transcript.)

12 BY MR. GARNETT:

13 Q Did you then ask the defendant about any other
14 details of that night, May 10th?

15 A Yes.

16 Q Was the defendant specifically asked about making
17 phone calls to the medical office?

18 A Yes.

19 Q And what did he say his reason for calling the
20 medical office was?

21 A He stated that he had a headache and wanted to get
22 some aspirin.

23 MR. GARNETT: If we could play clip 12,
24 Ms. Taylor.

25 (The following transcript is an excerpt from the

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video transcribed by Deposition Services, Inc.:)

"MR. LAVENDAR: But you have a medical facility here. Do you go there for treatment for any of your --

MR. LEGINS: Medical facility where?

MR. LAVENDAR: Don't you have a medical treatment facility?

MR. ORLOFF: Yeah, there's some medical professions here.

MR. LAVENDAR: All right.

MR. LEGINS: Yeah, but it's for the inmates, primarily. They can't even give me aspirin.

MR. ORLOFF: Okay. So you can't -- okay. So you don't get treatment here --

MR. LEGINS: No, I don't.

MR. LAVENDAR: -- for any of your issues that are going on? Okay.

MR. LEGINS: I asked them for aspirin one day, because I had a -- they couldn't even give me aspirin. So --

MR. LAVENDAR: Oh, you asked them for aspirin?

MR. LEGINS: Aspirin, because I had a really bad headache, you know. I had a really bad headache. And --

MR. ORLOFF: When was that?

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1 MR. LEGINS: I don't remember the exact date.

2 But, um --

3 MR. ORLOFF: Could it possibly have been on the
4 evening of May 10th?

5 MR. LEGINS: I'm not exactly -- I can't remember
6 the date. I just know that they couldn't do it,
7 you know. And I had a really bad headache. Just
8 a lot of pressure. A lot of stress. There's a
9 lot going on in my time, right now."

10 (End of transcript.)

11 BY MR. GARNETT:

12 Q Special Agent Lavender, during the course of your
13 investigation, did you obtain a work -- I'll call it a
14 work schedule for FCI Petersburg for the date of May 10th,
15 2018?

16 A Yes.

17 MR. GARNETT: Your Honor, I'd ask to show the
18 witness what's been marked as Government Exhibit 24.

19 THE COURT: Any objection?

20 MR. GAVIN: No, sir.

21 THE COURT: You're asking that it be admitted?

22 MR. GARNETT: I will be momentarily, Judge. I'd
23 also note that there's a stipulation that deals with the
24 authenticity of this particular document.

25 THE COURT: Why don't you publish the

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1 stipulation and then I'll admit it.

2 MR. GARNETT: Yes, sir.

3 So, ladies and gentlemen, this is paragraph 6 of
4 the parties' joint stipulations. Actually, I'm sorry,
5 Judge. There's not a stipulation as to this one. This
6 was a late-breaking exhibit. I apologize.

7 THE COURT: They're not objecting anyhow. So
8 I'm admitting it.

9 MR. GARNETT: Thank you, Your Honor.

10 (Government Exhibit Number 24 was admitted.)

11 MR. GARNETT: Ms. Taylor, can you go ahead and
12 pull up -- actually, pull up the top half of that so Agent
13 Lavender can read it? Can you include the top box there?
14 I'm sorry.

15 BY MR. GARNETT:

16 Q Agent Lavender, do you recognize that as the work
17 schedule for May 10th?

18 A Yes.

19 Q Okay.

20 MR. GARNETT: If we can close that out right
21 now, Ms. Taylor.

22 BY MR. GARNETT:

23 Q Agent Lavender, did the defendant tell you at this
24 point that he had been directed to call medical that
25 evening by a lieutenant?

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1 A Yes.

2 MR. GARNETT: And Ms. Taylor, can we go ahead
3 and play clip 13 now?

4 (The following transcript is an excerpt from the
5 video transcribed by Deposition Services, Inc.:)
6 "MR. LAVENDAR: You're saying you tried to log
7 on to print something off because you were being
8 too complacent. You're saying that at some
9 point, maybe within the day before you had
10 masturbated in the bathroom and cleaned up. So
11 if there's DNA in there, that's why it's in
12 there. And then you're saying that you did call
13 the medical facility --

14 MR. LEGINS: At some point.

15 MR. LAVENDAR: -- and this same day.

16 MR. LEGINS: Okay.

17 MR. LAVENDAR: It's documented. It's the same
18 day.

19 MR. LEGINS: Okay.

20 MR. LAVENDAR: Following this alleged assault.

21 MR. LEGINS: Okay.

22 MR. LAVENDAR: So, and you know that you can't
23 get anything there. You've never called there
24 before, is my understanding, in all the years
25 that you've been here. So the day of this

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1 alleged assault, you have a headache. You call
2 in there to ask for an aspirin. You happen to
3 have masturbated the day beforehand. And you
4 happened to try to log into the computer.

5 There's a lot of things going on here that don't
6 really -- as you know, there's things that,
7 there seems to be a lot of rationalization of
8 things that went on. I had a headache, so I had
9 to call medical. You've never done that before.

10 MR. LEGINS: But before that I called the
11 lieutenant's office.

12 MR. LAVENDAR: And he told you to call medical?

13 MR. LEGINS: He told me he doesn't have one for
14 me, to try to call medical.

15 MR. LAVENDAR: Okay.

16 MR. LEGINS: It was his idea for me to call
17 medical, not --

18 MR. ORLOFF: Who's your lieutenant?

19 MR. LEGINS: -- my own.

20 MR. ORLOFF: Who's the lieutenant?

21 MR. LEGINS: That was, um, I want to say
22 Lieutenant Clenments (phonetic sp.). I'm not
23 exactly sure who was working. It would've --

24 MR. ORLOFF: Do you know how to spell it?

25 MR. LEGINS: Uh, L-E, uh, L-E, uh, tenant. Um,

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1 C-L-E-N-M-E-N-T-S. And as a matter of fact,
2 after medical told me that they couldn't give
3 me, um -- uh, a thing, I called other units to
4 see if they had it, as well. It wasn't that I
5 specifically needed to call medical. I just
6 went -- I just had a headache. That was it."

7 (End of transcript.)

8 MR. GARNETT: Ms. Taylor, can you pull back up
9 Government Exhibit 24? If we can we blow up the top half
10 of that?

11 BY MR. GARNETT:

12 Q Agent Lavender, looking in the -- we'll call it the
13 third column. It has a 2. It's the 06 to 14:30 shift.
14 Do you see what time Lieutenant Clement would have been
15 working that evening -- or that day at FCI Petersburg?

16 A Give me one moment, please.

17 Q Sure.

18 A Yes.

19 Q And what shift was Lieutenant Clement working on
20 May 10th, 2018?

21 A 6 to 14:30.

22 Q So is that 6:00 a.m. to 2:30 p.m.?

23 A Yes.

24 MR. GARNETT: Okay. Ms. Taylor, if we can back
25 out of that zoom view and blow up the -- call it the

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1 right-hand side of the screen and scroll -- okay.

2 BY MR. GARNETT:

3 Q So, Agent Lavender, the far column there in terms of
4 the shifts that are available for May 10th, 2018, at FCI
5 Petersburg, the far shift is the 1600 to midnight shift;
6 is that right?

7 A Yes.

8 MR. GARNETT: Ms. Taylor, can you scroll down
9 that column? Is that possible or do you need to back back
10 out? All right. You can stop right there.

11 BY MR. GARNETT:

12 Q Looking about an inch above in that 6:00 p.m. to
13 midnight shift, what shift did defendant Chikosi Legins
14 work that day, May 10th?

15 A Mr. Legins is working into the midnight shift.

16 Q And what time would he have started his shift?

17 A 4:00 p.m.

18 Q And what time did Lieutenant Clement's shift end?

19 A 2:30.

20 Q So would Lieutenant Clement have been on duty at the
21 time that Chikosi Legins arrived for his shift?

22 A No.

23 Q Agent Lavender, you mentioned earlier that you
24 reviewed surveillance video surrounding the May 10th
25 incident at FCI Petersburg. Is it accurate to say that

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1 the defendant returned to Fox South from the unit team
2 area after escorting Brandon Lemagne into that area at
3 approximately 6:15 p.m.?

4 A Yes.

5 Q Okay. And in observing that surveillance footage,
6 did you observe whether the defendant returned to the unit
7 team area at approximately 6:30 p.m.?

8 A Yes.

9 Q Did you ask the defendant about his reason for
10 returning to that area?

11 A Yes.

12 MR. GARNETT: Can we go ahead and play clip 10,
13 Ms. Taylor?

14 (The following transcript is an excerpt from the
15 video transcribed by Deposition Services, Inc.):

16 "MR. ORLOFF: Is there a reason you went back
17 into that room, 6:30, 6:30ish, after you
18 escorted Lemagne out? What were you doing back
19 in there afterwards?

20 MR. LEGINS: I had to have a bowel movement.

21 But when I went in there, um, the other officer
22 and his guy was in there, so I left, because I
23 didn't want to have a bowel movement with them
24 in there. That's why I went in there. If you
25 look, I know I came right back out, because they

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1 was in there doing whatever, you know, shredding
2 paper or whatever they was doing, I don't know.

3 But they were in there. There was an officer
4 and an inmate already in there. So, I left out.

5 MR. ORLOFF: Okay. And then the previous night
6 you said you went and relieved yourself. But
7 how does that work? You do it over the toilet?
8 You did it in paper towels? You go --

9 MR. LEGINS: Oh my goodness.

10 MR. ORLOFF: -- to the bathroom?

11 MR. LEGINS: Um --

12 MR. ORLOFF: I think it's important because,
13 like I said, if the scene was processed --

14 MR. LEGINS: Yeah, that's just in the bathroom.
15 That was the bathroom. It was no other place
16 but the bathroom. And, um, I think I was, um,
17 standing up. God. I think I was standing up.
18 You know, and of course I used a paper towel.
19 And of course I cleaned myself off, you know,
20 accordingly."

21 (End of transcript.)

22 MR. GARNETT: And, Your Honor, this might be a
23 bridge too far, but, Ms. Taylor, can we go to Government
24 Exhibit 2, the video?

25 (Video Played.)

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1 MR. GARNETT: And could you stop it right there?
2 Could you scroll to the 7:41 mark of that clip?

3 MS. TAYLOR: 7:41 in the bottom?

4 MR. GARNETT: Yes, please.

5 THE COURT: What time is that going to be on
6 military time?

7 MR. GARNETT: Your Honor, I'll note that it's --
8 the time is 18:15:59 --

9 THE COURT: Okay.

10 MR. GARNETT: -- at the top.

11 Go ahead and play it, Ms. Taylor. Thank you.

12 (Video Played.)

13 MR. GARNETT: Go ahead and pause it, Ms. Taylor.

14 BY MR. GARNETT:

15 Q And, Agent Lavender, is this the defendant returning
16 to the unit team area at approximately 18:30?

17 A Yes.

18 Q I think the video showed 18:30:05. And the defendant
19 indicated to you that he had returned after seeing another
20 officer in that area?

21 A He did.

22 MR. GARNETT: You can go ahead and hit play,
23 Ms. Taylor.

24 (Video Played.)

25 MR. GARNETT: Thank you, Ms. Taylor.

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1 BY MR. GARNETT:

2 Q Special Agent Lavender, what's the time at the top of
3 the screen after the defendant returned right back out?

4 A 18:31:14.

5 Q Special Agent Lavender, during the course of this
6 interview, did agents discuss the presence of surveillance
7 cameras at FCI Petersburg?

8 A We did.

9 MR. GARNETT: Ms. Taylor, can we play clip 16,
10 please?

11 (The following transcript is an excerpt from the
12 video transcribed by Deposition Services, Inc.):

13 "MR. ORLOFF: So, I guess, when it comes down
14 to, if your DNA is found on his clothing, or
15 other areas, I mean, how would you explain that?
16 I mean, is that just --

17 MR. LEGINS: I --

18 MR. ORLOFF: -- is there a way to explain that?

19 MR. LEGINS: You said this like 20 times, so you
20 must have some type of -- I don't, I don't know
21 where my DNA -- my DNA shouldn't be nowhere near
22 him. The only time that I did whatever I did
23 was that one day, period. For, you know, for
24 the whole entire time, I've never done that
25 before. And I had to do that because, like I

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1 said, I was, you know, getting erections while I
2 was working. Um, so --

3 MR. ORLOFF: What about exposing yourself to
4 Lemagne? Has that ever happened?

5 MR. LEGINS: There was never a situation where I
6 was out of camera view, unless I walked him from
7 one point to another. There was never a point.
8 There's cameras everywhere. Unless I walked him
9 -- and then, the only time where I didn't walk
10 him from one point directly to the other was the
11 10th, because I stopped off at unit team, which
12 I've never done.

13 So, there was never a time period where he was
14 in there for the couple of seconds it takes to
15 walk across. If there was ever a time when I
16 had to put him on an elevator, I would've
17 notified the officers downstairs and said, hey,
18 one's coming down on your back elevator door.
19 And that would've been it. That would've been
20 it. It wouldn't have been, no."

21 (End of transcript.)

22 BY MR. GARNETT:

23 Q Agent Lavender, by the end of the interview, had the
24 defendant attempted to explain to you and Agent Orloff how
25 his DNA could possibly have been recovered?

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1 A No.

2 Q I'm sorry. Possibly recovered from Brandon Lemagne?

3 A No.

4 Q Did he continue to claim that he had never had sexual
5 contact with any inmate at any time?

6 A Yes.

7 MR. GARNETT: Ms. Taylor, can we play clip 17?

8 (The following transcript is an excerpt from the
9 video transcribed by Deposition Services, Inc.):

10 "MR. LEGINS: But I don't understand how my DNA
11 would come -- I don't understand how he would
12 obtain my DNA.

13 MR. LAVENDAR: Okay.

14 MR. LEGINS: The only time, like I said, was the
15 day before. But I cleaned up and --

16 MR. LAVENDAR: Okay.

17 MR. LEGINS: -- and everything like that, so.

18 MR. LAVENDAR: All right. So this, and again,
19 I'm just, I'm giving you the last opportunity
20 here to make any corrections or any type of --

21 MR. LEGINS: Right.

22 MR. LAVENDAR: -- maybe clarifications. We call
23 it, we call it a, uh, you know, basically, a
24 last call for any type of information you think
25 might be important. Because once I take this,

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1 I'm going to stay with that with your
2 statements.

3 MR. LEGINS: Right.

4 MR. LAVENDAR: And again, a 1001 charge, lying
5 on top of everything else, it --

6 MR. LEGINS: I really appreciate you.

7 MR. LAVENDAR: Okay. So --

8 MR. LEGINS: Yeah.

9 MR. LAVENDAR: -- at this point we're going to
10 go with you're stating that there was never any
11 sexual contact, consensual or non-consensual,
12 with Mr. Lemagne or any other inmate --

13 MR. LEGINS: Right.

14 MR. LAVENDAR: -- at that, at this facility?

15 MR. LEGINS: Yes, that's exactly what I'm
16 saying.

17 MR. LAVENDAR: Okay."

18 (End of transcript.)

19 MR. GARNETT: That's all the questions I have,
20 Your Honor. Thank you.

21 THE COURT: All right. I think what we'll do is
22 this is a perfect time for our afternoon break. So we'll
23 break until 3:25 and then we'll pick back up.

24 All rise for the jury.

25 (The jury exited the courtroom.)

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1 THE COURT: Anything we need to take up?

2 MR. GAVIN: No, sir.

3 THE COURT: Agent Lavender, remember not to talk
4 about your testimony with anybody. You're still on the
5 witness stand.

6 SPECIAL AGENT LAVENDER: Yes, Your Honor.

7 (Recess from 3:09 p.m. until 3:26 p.m.)

8 THE COURT: All right. We're going to bring the
9 jury in. So why don't you just -- everybody remain
10 standing.

11 (The jury entered the courtroom.)

12 THE COURT: All right. Everyone can have a
13 seat.

14 Everybody doing okay over there?

15 A JUROR: Yes.

16 THE COURT: By the way, if you all want to
17 stretch, you can stand up at any point during the
18 testimony as well.

19 All right. Mr. Gavin.

20 MR. GAVIN: Yes, sir.

21 **CROSS-EXAMINATION**

22 BY MR. GAVIN:

23 Q Good afternoon, Special Agent Lavender.

24 A Good afternoon, sir.

25 Q Special Agent Lavender, as I understand, Count Five

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1 includes false statements that includes two different
2 false statements which you allege were made under the
3 indictment, the first being that he didn't have sex with
4 Mr. Lemagne when he, in fact, did, both anal and/or oral
5 on one of two dates; is that right?

6 A That's my understanding.

7 Q And the second is that he lied to you about
8 attempting to log into the computer system to print out
9 something in the office; is that correct?

10 A That's my understanding.

11 Q All right. Did he ever tell you that he actually
12 logged in or did he just tell you that he tried to log in?

13 A He said he attempted to log in.

14 Q And with respect to the sex, if the jury were to
15 believe that he's not guilty of having sex with the
16 defendant, are there other lies out there that would be
17 encompassed by Count Five under that first provision?

18 A Excuse me, sir. Could I ask you to repeat that,
19 please?

20 Q Sure. If the jury were to conclude that there were
21 no other sex acts established between Mr. Legins and
22 Mr. Lemagne, are there any other statements under Count
23 Five that you would believe would have been materially
24 false?

25 THE COURT: I think what he's asking is this.

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1 Put the sex aside, right.

2 THE WITNESS: Okay.

3 THE COURT: Let's say, hypothetically, that the
4 false statement that's alleged in Count Five says -- the
5 second one -- that the defendant falsely stated that on
6 May the 10th, 2018, he attempted to use the computer and
7 the printer while he was engaged in, quote, just
8 conversation with inmate B.L. when they were alone in an
9 unattended office with no surveillance cameras.

10 THE WITNESS: Okay.

11 THE COURT: I think what he's asking you -- and
12 you'll correct me if I'm wrong -- one of the issues of
13 false statements is whether something is material. And
14 absent the allegation about the unlawful sexual assault,
15 would any false statement about using a computer be
16 material?

17 Is that what you're asking?

18 MR. GAVIN: Yes, sir.

19 THE COURT: Would the -- something false about
20 the computer have -- be material without the sexual
21 background is what I think his point is.

22 MR. GARNETT: Judge, if I could object. I'm not
23 sure that he's qualified to testify to materiality. I
24 think that's a jury finding as to whether or not something
25 is --

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1 THE COURT: Well, he can talk about the impact
2 upon the investigation. That's what I think he's --
3 that's what he can testify to, and that alone. They'll
4 get a jury instruction about materiality.

5 But is there anything important about whether or
6 not he made a false statement about the computer other
7 than his connection to the sexual activity?

8 THE WITNESS: Your Honor, I'm not trying to be
9 difficult. I'm just trying to make sure I'm answering
10 this correctly.

11 THE COURT: I understand.

12 THE WITNESS: You're asking me if we -- pose it
13 one more time again. I just want to make sure I'm
14 answering this correctly.

15 THE COURT: Okay. Absent the allegation that
16 there's illegal sexual assault here, right, would there be
17 anything material about -- a false statement about the
18 defendant using the computer in the way that's alleged in
19 the indictment, in terms of your investigation -- like
20 let's say hypothetically -- and I'm not saying this is
21 true -- if the government proved that he did lie about
22 using the computer but there is no evidence to prove that
23 he had sexual conduct with Mr. Lemagne, would that still
24 have a material impact on your investigation?

25 Because that's what 1001 is about, right?

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1 THE WITNESS: Yes, sir. Yes, Your Honor.

2 THE COURT: Would that still affect your
3 investigation?

4 Is that what your question is?

5 MR. GAVIN: Yes, sir.

6 THE COURT: Okay.

7 THE WITNESS: Your Honor, again, I'm not trying
8 to -- I'm just trying to make sure I answer this because
9 it seems to be an issue for Mr. Gavin here. But if you're
10 asking to separate the sex acts from the computer logging
11 on, if the -- you're asking me if the sex acts aren't
12 supported, does it have any bearing upon the computer?

13 THE COURT: Let me ask it a different way. Are
14 they necessarily tied together? That's what I think his
15 point is.

16 MR. GAVIN: Yes, sir.

17 THE WITNESS: In my opinion, it is.

18 THE COURT: Okay. That's all he wanted to ask.

19 All right. You can have a seat, Mr. Garnett.

20 MR. GARNETT: Thank you, Your Honor.

21 BY MR. GAVIN:

22 Q So what is the significance of the computer to the
23 sex acts?

24 A The significance is -- I don't want to say anything
25 out of line, but the significance is your client lied

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1 about being on a computer to cover up the sex acts.

2 Q But he never stated he was on a computer.

3 A He --

4 THE COURT: Hold on a second.

5 BY MR. GAVIN:

6 Q Did he ever say he was on a computer?

7 THE COURT: The evidence speaks for itself.

8 You're not going to comment on that.

9 MR. GAVIN: Sorry.

10 BY MR. GAVIN:

11 Q Did he ever state that he was on the computer?

12 A Yes, he did.

13 Q I thought you just testified that he said he
14 attempted to get on the computer.

15 A Well, in order to attempt to get on a computer,
16 you're on a computer.

17 Q Okay. Special Agent, you made significance to the
18 fact that Mr. Legins came out of the corridor and then
19 went back in for a period of time, and it was allowed to
20 play. And is that the time that you're referring to as
21 the time in which he went back in and he told you that he
22 was going to have a bowel movement in the bathroom but
23 there was another gentleman back in there, along with an
24 inmate, at the same time?

25 A I believe so, yes.

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1 Q Did you go back and look at the Fox North tape to see
2 if somebody had entered the corridor from the Fox North
3 side, including the unit office?

4 A No.

5 Q Wouldn't that have been the easiest way to figure out
6 if what he was telling you was correct, whether or not
7 there was footage from the Fox North side, along with
8 another inmate, going into the unit office?

9 A Repeat your question to make sure I'm answering
10 correctly.

11 Q Wouldn't it have been easy to look at the Fox North
12 tape to see if whether the Fox North unit officer and an
13 inmate had entered the corridor from the Fox North side at
14 the same time Mr. Legins said he was going back in there
15 to have a bowel movement?

16 A Yes, we could have looked at that. But your client
17 said he turned around and came right back out, indicating
18 that there was no reason to look because he went in and
19 came straight back.

20 Q So how do you know that was part of the lie if the
21 footage on the other side would have confirmed that he was
22 telling you the truth?

23 A Your client said he walked in and came right back
24 out, and that was 70 seconds. So I didn't find it
25 necessary to go and check because of that time frame of 70

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1 seconds for a 15-foot walk.

2 Q But you don't know whether he was lying or not.

3 A I know he took 70 seconds to go approximately 15 feet
4 and said he came right back out.

5 Q Okay. But his excuse to you was that he went in to
6 use the bathroom and there was somebody else already in
7 there, the officer from Fox North, along with an inmate
8 from Fox North, doing something, shredding paper, doing
9 whatever in the office, correct?

10 A Yes. His excuse was that.

11 Q Okay. So the question, then, is did you do anything
12 to verify or corroborate what he was telling you by
13 looking at the Fox North tape to find out if the Fox North
14 officer had, in fact, entered the corridor with an inmate
15 to go into the office and shred paper?

16 A I can't say that video doesn't exist, but I did not
17 see it.

18 MR. GAVIN: I don't have any other questions.

19 THE COURT: All right. Any redirect?

20 MR. GARNETT: No redirect, Your Honor.

21 THE COURT: All right. Agent, you can step
22 down. Again, don't talk about your testimony with anybody
23 until the trial is over.

24 THE WITNESS: Thank you, Your Honor.

25 (Witness stood aside.)

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1 THE COURT: Do you want to call your next
2 witness?

3 MR. GARNETT: Yes, Your Honor. The
4 United States would call Darryl Strausser.

5 **DARRYL STRAUSSER,**
6 called by the government, first being duly sworn,
7 testified as follows:

8 THE COURT: All right. Mr. Garnett.

9 MR. GARNETT: Thank you, Your Honor.

10 **DIRECT EXAMINATION**

11 BY MR. GARNETT:

12 Q Good afternoon, Mr. Strausser.

13 A Good afternoon.

14 Q Could you please introduce yourself to the jury, and
15 spell your first and last names for the court reporter
16 here?

17 A My name is Darryl Strausser. It's D-A-R-R-Y-L,
18 S-T-R-A-U-S-S-E-R.

19 Q Mr. Strausser, are you currently employed?

20 A No, sir.

21 Q Where are you currently employed?

22 A I was the IT manager at FCC Petersburg.

23 Q And when did you leave that position?

24 A It would have been June of 2018.

25 Q And how long did you hold that position at FCI

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1 Petersburg?

2 A That would have been from August of 2009 until that
3 point when I retired.

4 Q And what did you say your title was again? I'm
5 sorry.

6 A IT manager for the entire complex.

7 Q And you say "complex." What kind of facilities are
8 on FCC Petersburg?

9 A Medium, where my office was, the low, and the camp.

10 Q What were your duties as the IT services manager?

11 A Basic network security and network -- local area
12 network management.

13 Q Okay. Prior to August 2009 when you arrived at
14 Petersburg, were you employed by BOP at a different
15 location?

16 A Yes. Previous to that, I was at FCI Memphis.

17 Q And what was your position there?

18 A Went there in April of '98 as an IT specialist and
19 left there in August of 2009 as an IT manager.

20 Q So were you promoted while at Memphis?

21 A Yes. I was there -- came there as a GS7 and left as
22 a GS12.

23 Q And your training for the jobs that you held I guess
24 at end of your Memphis tenure and then for the duration of
25 your Petersburg tenure as the IT services manager, what

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1 kind of training did you receive for that position?

2 A Mainly annual training, information security training
3 and technology training at the training facility out in
4 Aurora, Colorado.

5 Q Did you receive annual training as well, you said?

6 A Yes.

7 Q Did you supervise training for the staff at FCI
8 Petersburg?

9 A Yes.

10 Q And did you stay, to the best of your ability,
11 current in updates in that field, information technology?

12 A Yes.

13 MR. GARNETT: Your Honor, at this point I'd move
14 to qualify Mr. Strausser as an expert in the field of
15 Bureau of Prisons information technology procedures.

16 THE COURT: Do you have any objection?

17 MR. GAVIN: No, sir.

18 THE COURT: All right. So accepted. He's
19 another expert. You've heard me say that experts can give
20 opinions, and I'll give you more instructions at the end
21 of the trial about their testimony. Okay?

22 MR. GARNETT: Thank you, Your Honor.

23 BY MR. GARNETT:

24 Q Mr. Strausser, let's talk a little bit about the
25 information technology set up there at FCC Petersburg. Do

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1 prison staff on the prison complex use computers in the
2 regular course of their duties?

3 A Yes, they do.

4 Q Would that include correctional officers?

5 A Yes.

6 Q Let's talk about how computer access would work for
7 those employees. Do employees -- are they issued a
8 personal ID card or a PIV card?

9 A Yes.

10 Q What is that, Mr. Strausser?

11 A That's a -- a means of identification, also another
12 level of security where they would use that card to log
13 into the computers.

14 Q Does a PIV card have a personal identification number
15 assigned to it?

16 A Yes. It's associated with their user ID and other
17 personal information that's on -- that reside on the chip
18 on that card.

19 Q Is the PIN number essentially sort of a passcode?

20 A Yes.

21 Q So we'll talk a little bit more about BOP employee
22 numbers in a second. But for the time being, is every BOP
23 employee assigned a unique Bureau of Prisons employee
24 number?

25 A Yes.

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1 Q And what would that number look like? What was your
2 BOP employee number, for instance?

3 A It was the letters BOP, followed by a randomly
4 generated four numbers.

5 Q Four numbers?

6 A Or five numbers.

7 Q And is the BOP employee number that an employee is
8 assigned, is that linked to their PIV card?

9 A Yes, it is.

10 Q To log onto a computer at FCI Petersburg, does that
11 involve a multistep process?

12 A Yes, it does.

13 Q Could you walk the jury through what that process
14 would look like from start to finish?

15 A First, the employee would sit down at the computer
16 and take their PIN -- their PIV card out of their holder
17 and insert it into the PIV card reader. And then they
18 would press the control-alt-delete button simultaneously,
19 which would bring up a dialogue box where they would be
20 able to insert their BOP ID number, which we were just
21 talking about. BOP followed by four numbers.

22 And then they would be -- after they clicked
23 okay on that, they would be prompted to enter in a PIN
24 number, which they had to generate themselves, and only
25 themselves would know that PIN number, and then

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1 acknowledge that. And then that would allow them access
2 into not only the local computer but the network resources
3 that are attached to that computer.

4 Q So just to be clear, to get to the part of the log-in
5 process where your PIN code would be entered, you would
6 have already had to successfully enter your BOP number?

7 A That's correct.

8 Q Are you familiar with FCC Petersburg's information
9 technology records?

10 A Yes.

11 Q Okay. When an employee at FCC Petersburg accesses a
12 computer, does the computer automatically generate records
13 of that access attempt?

14 A That's correct.

15 Q Okay. And are those records retained by the Bureau
16 of Prisons? In other words, can those records be
17 retrieved after the fact?

18 A Yes.

19 Q All right. And are those records retained by the
20 Bureau of Prisons in the ordinary course of business? In
21 other words, it is BOP's procedure to retain these
22 electronic records?

23 A Yes.

24 Q In June of 2018, Mr. Strausser, were you directed to
25 perform a computer record search to determine whether a

Darryl Strausser - Direct

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1 specific computer within FCI Petersburg was accessed
2 during a certain time range?

3 A Yes.

4 Q And what computer were you specifically directed to
5 search access database records for?

6 A The secretary's computer in the housing unit.

7 Q Was that assigned a particular number?

8 A Yes.

9 Q Okay. Did you draft a memorandum of your assignment
10 and your search?

11 A Yes, I did.

12 Q Okay. Give me one second here, Mr. Strausser. Would
13 it help you to be able to reference that report when
14 you're testifying here today?

15 A Yes, please.

16 Q Okay.

17 THE COURT: Do you have any objection to him
18 reviewing that report, Mr. Gavin?

19 MR. GARNETT: No, sir, I don't.

20 THE COURT: I gather you've given a copy of this
21 before to Mr. Gavin?

22 MR. GARNETT: This was provided in discovery
23 earlier, Your Honor, but --

24 MR. GAVIN: I've seen it.

25 THE COURT: Okay.

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1 MR. GAVIN: Thank you, Officer Spivey.

2 It's just a series of long computer numbers,

3 Judge, that --

4 THE WITNESS: Thank you.

5 CSO SPIVEY: Yes, sir.

6 BY MR. GARNETT:

7 Q Mr. Strausser, do you recognize that document?

8 A Yes, I do.

9 Q And what is that document?

10 A That is the memorandum that I provided Mr. Bruce
11 Norman, the SIA, on June 8th, 2018.

12 Q And does that memorandum capture the assignment you
13 were given in terms of what computer to search for?

14 A Yes.

15 Q And what computer were you specifically directed to
16 search access database records for?

17 A That would be the F unit secretary office computer.

18 Q Okay. Did that computer come with a specific
19 designator?

20 A Yes.

21 Q And what designator was that?

22 A It was the number UNT-0114103583.

23 Q And when you get a number like that, Mr. Strausser,
24 that UNT and then a long stretch of numbers, are you able
25 to go to your records and determine where precisely that

Darryl Strausser - Direct

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1 computer would be located at FCI Petersburg?

2 A Yes.

3 Q And in this case, did you locate that computer in the
4 FCI Petersburg database inventory?

5 A Yes.

6 Q And after locating that computer, did you then go to
7 the physical location that the database inventory
8 indicated that computer was stored at?

9 A Yes.

10 Q And where was that particular computer, that UNT --
11 that long number you listed, where was that computer
12 located?

13 A I did confirm that it was in the F unit secretary's
14 office.

15 Q Was there any other computer located in that
16 secretary's office?

17 A No.

18 Q Now, you mentioned earlier that you had searched for
19 access records for that particular computer for a certain
20 date range. What dates were you directed to search for?

21 A That would have been May 9th of 2018 and May 10th of
22 2018.

23 Q All right. And were you also directed to search for
24 access attempts to that computer by a specific BOP
25 employee number?

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1 A Yes.

2 Q And what specific BOP employee number was that?

3 A That was BOP 52312.

4 Q And does FCI Petersburg maintain records indicating
5 which employee is assigned which employee number?

6 A Yes.

7 Q Okay. Which employee was assigned BOP number 52312?

8 A That would have been Mr. Legins.

9 Q Did you know Chikosi Legins prior to receiving this
10 search assignment?

11 A Not personally.

12 MR. GARNETT: Ms. Taylor, if you could go ahead
13 and pull up what's been marked as Government's Exhibit 21.

14 THE COURT: Any objection?

15 MR. GAVIN: No, sir.

16 THE COURT: Do you want to admit it?

17 MR. GARNETT: Yes, please.

18 THE COURT: It's admitted.

19 MR. GARNETT: Thank you, Your Honor. And,
20 Your Honor -- just for the record, Your Honor, I'd note
21 that Government Exhibit 21 is referenced in paragraph 6 of
22 the parties' joint stipulations, which goes to the
23 authenticity of that record.

24 THE COURT: Did we already publish that one?

25 MR. GARNETT: Yes, sir.

Darryl Strausser - Direct

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1 THE COURT: That's fine. All right.

2 BY MR. GARNETT:

3 Q So, Mr. Strausser, this is probably sort of small
4 here.

5 MR. GARNETT: Ms. Taylor, can you go ahead and
6 blow up the top half of that report?

7 BY MR. GARNETT:

8 Q Mr. Strausser, have you seen this document before?

9 A Yes.

10 Q And what is this document?

11 A That was the document referenced in the memorandum
12 that directed me to search log-in attempts on that
13 particular computer.

14 Q So to be clear, the record search you ran, did it
15 capture all access attempts on this computer or only
16 access attempts by the defendant's BOP number?

17 A All access attempts.

18 Q In reviewing the access records for this computer,
19 did you determine whether there were any log-on attempts
20 by the defendant -- so BOP number 52312 -- on the date of
21 May 9th, 2018?

22 A Yes.

23 Q When did that log-on take place?

24 A 9:04 p.m.

25 Q Did your record search for this computer locate any

Darryl Strausser - Direct

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1 log-on attempts by the defendant for May 10th, 2018?

2 A No, it did not.

3 Q So take a step back here. If an employee were able
4 to complete the full log-on process, Mr. Strausser -- you
5 mentioned that --

6 A Yes.

7 Q -- process there from inserting your PIV card, to
8 hitting control-alt-delete, to BOP employee number, to
9 successfully entering their PIN number, would that create
10 an access log that would indicate which specific BOP
11 employee number accessed the computer?

12 A Yes.

13 Q Okay. If an employee wasn't able to get to that last
14 step, let's say that the PIN number, for whatever reason,
15 wasn't entered successfully, would the access logs be able
16 to tell you which BOP employee number tried to access that
17 computer?

18 A No.

19 Q I'm sorry. No?

20 A No.

21 Q But to take a step back here, you said earlier that
22 the computer access records captured all access attempts
23 on this computer and not just access attempts linked to a
24 certain BOP employee number; is that right?

25 A That's right.

Darryl Strausser - Direct

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1 Q Okay. In other words, did the computer database
2 search you ran tell you whether there were any access
3 attempts?

4 A Yes.

5 Q Let alone who attempted to access the computer, just
6 whether there were any access attempts on that computer on
7 May 9th and May 10th?

8 A Yes.

9 Q Okay. In reviewing those records, did you determine
10 whether anyone, not just the defendant's BOP number,
11 whether anyone attempted to access this computer at any
12 point after 6:00 p.m. on May 10th, 2018?

13 A Could you repeat that time?

14 Q Sure. Were you able to find any access attempts by
15 anyone on this computer after 6:00 p.m. on May 10th of
16 2018?

17 A No, I did not.

18 Q So, Mr. Strausser, is it fair to say that you're
19 familiar with a computer keyboard?

20 A Yes.

21 Q And this might sound like pretty basic in terms of
22 questions, but what keys would an employee use to enter
23 their BOP employee number? Letters, numbers or both?

24 A Both.

25 Q Okay. What keys would they need to enter their PIN

Darryl Strausser - Cross

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1 number?

2 A Numbers.

3 Q All right. How long, after entering a BOP employee
4 number and clicking the arrow, would it take for the PIN
5 code box to pop up on the screen?

6 A Anywhere from immediately to a few seconds.

7 Q And can you think of any reason why an employee would
8 be able to successfully enter a series of numbers for
9 their BOP employee number and then seconds later be unable
10 to enter any numbers for a PIN number?

11 A No.

12 MR. GARNETT: That's all the questions I have,
13 Your Honor.

14 THE COURT: All right. Mr. Gavin.

15 MR. GAVIN: Yes, sir, thank you.

16 **CROSS-EXAMINATION**

17 BY MR. GAVIN:

18 Q Mr. Strausser, good afternoon.

19 A Good afternoon.

20 Q This is a computer question so there's no reason why
21 you'll believe that I'm confused. But I'm trying to
22 understand your report, and as I understand your testimony
23 or your statement to Special Agent Lavender, there are
24 three things that have to happen before a person can
25 actually access the system, correct?

Darryl Strausser - Cross

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1 A Correct.

2 Q You have a PIV card. You plug that in, right?

3 A Yes.

4 Q Then you have to go to the computer. You put in your
5 BOP number.

6 A Yes.

7 Q Then you have to do a third function, which is to
8 type in a PIN number.

9 A Yes.

10 Q And once all three of those things are done, then
11 your system would generate a record.

12 A Right.

13 Q Until that point, does your system generate a record?

14 A Yes.

15 Q When does it start generating the record? Does it
16 start generating the record when you put in the PIV card?

17 A Yes, I believe. Yes.

18 Q Are you sure about that?

19 A Well, it -- it -- in all the records, there are
20 records in the report that show no associated -- no
21 associated account number. So there are many services
22 that are called upon every step of the process.

23 Q So if somebody put in a PIV card but they didn't put
24 in their next number, which is their user name, would you
25 be able to identify who entered the PIV card into the

1 system?

2 A I don't believe.

3 Q All right. So if the person put in the PIV card but
4 then he could not type in his BOP number because he either
5 didn't understand the computer keyboard, the number lock
6 was on, the number lock was off, would that show that this
7 defendant actually tried to access the system?

8 A It wouldn't show specifically because it wouldn't --
9 because he wouldn't have entered in a PIN, which at that
10 point is accessing the SAM database, which checks to see
11 if the correct ID and the correct PIN was entered.

12 MR. GAVIN: I don't have any other questions.

13 THE COURT: Do you have any redirect?

14 MR. GARNETT: Just very briefly, Your Honor.

15 **REDIRECT EXAMINATION**

16 BY MR. GARNETT:

17 Q So, Mr. Strausser, in order for the records to
18 indicate that a particular BOP employee number was the
19 particular BOP employee to utilize the computer, that
20 individual would need to successfully enter not just their
21 BOP employee number, but their PIN code number as well?

22 A Yes, or unsuccessfully. Successfully or
23 unsuccessfully.

24 Q But they have had to enter a PIN number --

25 A Yes, they would have to enter in something.

Darryl Strausser - Redirect

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1 Q Okay. But if they weren't able --

2 THE COURT: I'm sorry. "Something" referring to
3 the PIN number?

4 THE WITNESS: Yes.

5 THE COURT: So if somebody puts in their PV
6 card, right, or whatever, PIV card --

7 THE WITNESS: Yes.

8 THE COURT: -- and then they put in the accurate
9 BOP number --

10 THE WITNESS: Yes.

11 THE COURT: -- right, but they type their wrong
12 PIN number --

13 THE WITNESS: Right.

14 THE COURT: -- that would have still been
15 captured in your audit that you ran?

16 THE WITNESS: Yes. Yes. And -- and because it
17 was -- it would be -- come back as a success or a failure,
18 an audit success or an audit failure.

19 THE COURT: Okay.

20 THE WITNESS: But the only thing that I had
21 provided was -- was any instance that was tied to that BOP
22 ID, since my direction was to search to see if any access
23 by that BOP ID took place on those dates.

24 THE COURT: So are you saying, then, you did not
25 search the situation that I described, which is somebody

Darryl Strausser - Redirect

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1 puts in their -- was it PIV? Is that --

2 THE WITNESS: Yes.

3 THE COURT: -- PIV card, puts in their right BOP
4 number but puts in a wrong PIN number, you didn't search
5 that situation?

6 THE WITNESS: Yes. I -- it was all -- all
7 instances, whether the attempt was successful or not
8 successful.

9 THE COURT: So you did search that?

10 THE WITNESS: Yes.

11 THE COURT: Okay. And does it show any input by
12 Mr. Legins after 6:00 on May the 10th?

13 THE WITNESS: No, it does not, not specifically
14 for that BOP account.

15 THE COURT: All right. Does that clear it up?

16 MR. GARNETT: It does, Your Honor. What I want
17 to go ahead and do and take a step backwards, though --

18 THE COURT: You can, but I -- Mr. Gavin, I'll
19 give you an additional round of cross-examination just
20 because we're getting this cleared up.

21 MR. GAVIN: Thank you, Your Honor.

22 BY MR. GARNETT:

23 Q So, again, just to clarify, your record search -- you
24 were searching for all access records; is that correct?

25 A Right. That's correct, on those dates.

Darryl Strausser - Redirect

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1 Q The access attempts captured by that record wouldn't
2 be able to record what BOP employee number was making the
3 access attempt unless that BOP user entered the PIN
4 number, correctly or incorrectly?

5 A That's -- that's correct. So -- so the SAM database
6 is a database that has -- that contains the password
7 and/or PIN. So it can give access to the local area
8 computer, which -- the local computer, which, in turn,
9 gives access to the whole network, which would be --
10 include Internet access and so forth.

11 So that SAM database residing on the computer is
12 what checks -- what makes the check of what he entered
13 into the keyboard versus what is -- what is the correct ID
14 and PIN in the database.

15 Q But, again, just to go back to the very beginning of
16 the process. So putting aside the PIN thing --

17 A Right.

18 Q -- again, on the hypothesis that in a particular
19 instance, an individual might not be able to enter a PIN
20 at all.

21 A Right.

22 Q So putting aside that piece, the computer access
23 records would have captured that evening -- or the report
24 you got would have captured anything that happened after a
25 BOP slapped their PIV card into that machine and hit

Darryl Strausser - Recross

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1 control-alt-delete; is that correct?

2 A That's correct. Yes.

3 Q And you were not able to find any access attempt --

4 A No.

5 Q -- regardless of who the computer was able to

6 confirm, after 6 p.m. that evening; is that right?

7 A My recollection was before that, yes. It was the

8 last record of -- that just showed no -- no account tied

9 to it.

10 MR. GARNETT: Thank you, Your Honor.

11 THE COURT: Do you have any follow-up questions?

12 MR. GAVIN: Yes, sir.

13 **RECROSS-EXAMINATION**

14 BY MR. GAVIN:

15 Q Three steps, right?

16 A Yes, sir.

17 Q PIV, user name, PIN code?

18 A (Nodding head.)

19 Q A person puts their PIV statement and is

20 unsuccessful, for whatever reason, in putting in their

21 user name because they screw up the keyboard, can't type,

22 whatever --

23 A Right.

24 Q -- would they ever gain access to the system?

25 A They would not gain access.

Darryl Strausser - Recross

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1 Q Would your system have picked it up at that point --

2 A Yes.

3 Q -- that somebody was actually trying to put in their
4 user name and put it incorrectly? Not the PIN number, the
5 user name.

6 A Not -- well, it would not -- it would not come back
7 for -- for what I searched, it would not come back as
8 unsuccessful because there was no PIN attempt.

9 Q All right. So if they took one step and two step and
10 went to the third step and screwed up the third step,
11 you'd have a record of that?

12 A Yes.

13 Q If they went one step, two step, three step and did
14 it correctly, you'd have a record of that?

15 A Yes.

16 Q But if they did it one step, two step and didn't
17 complete step 2 correctly, you would not have a record of
18 that?

19 A If -- the -- the -- it would show -- if they had the
20 two-step, which would be the BOP, and the PIN?

21 Q No. The first step is the PIV card.

22 A Oh, okay. Okay.

23 Q So if they put in the PIV card but they're
24 unsuccessful in putting in their user name, is that going
25 to be recorded anywhere?

Darryl Strausser - Further Redirect

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1 A Not on the SAM database.

2 Q They never get to step two -- to complete step two.

3 A Not on the SAM database because it would -- they're

4 not -- they're not looking at the unsuccessful --

5 Q Okay.

6 MR. GAVIN: No other questions, Your Honor.

7 THE COURT: Do you have a redirect on that?

8 MR. GARNETT: Yes, Your Honor.

9 **FURTHER REDIRECT EXAMINATION**

10 BY MR. GARNETT:

11 Q I think we're confusing the issue, or at least we're

12 confusing the process here. So, Mr. Strausser, the

13 computer access database check you ran --

14 A Yes.

15 Q -- captured all access attempts, right?

16 A Right. Successful or unsuccessful, yes.

17 Q Thank you. When a BOP employee puts their PIV card

18 in and hits control-alt-delete, would that have been

19 captured in the access database records you ran?

20 A Just the PIV card and no entry?

21 Q They hit -- PIV card and hit control-alt-delete to

22 move to the BOP employee number screen?

23 A It would have been -- it would have been -- here's

24 the difference is that it would have been captured as a --

25 an action, but it would not have been associated with an

LaShawn Ruffin - Direct

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1 account.

2 Q Right. Did you identify any such actions after
3 6:00 p.m. that evening?

4 A None.

5 MR. GARNETT: All right. Thank you, Your Honor.

6 THE COURT: All right. Mr. Strausser, thank you
7 for your testimony. You can step down. I'm going to
8 instruct you not to talk about your testimony with anybody
9 else until our trial is over. Is that okay?

10 THE WITNESS: Yes, Your Honor.

11 THE COURT: All right. Thank you. You're
12 excused.

13 (Witness stood aside.)

14 THE COURT: All right. Do you want to call your
15 next witness?

16 MS. GILBERT: Your Honor, the government would
17 call LaShawn Ruffin.

18 **LASHAWN RUFFIN,**

19 called by the government, first being duly sworn,
20 testified as follows:

21 **DIRECT EXAMINATION**

22 BY MS. GILBERT:

23 Q Good afternoon.

24 A Good afternoon.

25 Q Could you please state and spell your name for the

LaShawn Ruffin - Direct

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1 record?

2 A My first name is LaShawn, L-A-S-H-A-W-N. Last name
3 Ruffin, R-U-F-F-I-N.

4 Q Ms. Ruffin, who is your employer?

5 A United States Public Health Service.

6 Q And where do you work?

7 A Butner, North Carolina, at the Federal Bureau of
8 Prisons.

9 Q What is your title?

10 A Nurse practitioner.

11 Q What are your duties as a nurse practitioner at the
12 federal correctional institute in Butner, North Carolina?

13 A So primarily, I see inmates on a daily basis for sick
14 call reasons, new patients that come into the facility,
15 for chronic care visits. I see patients annually or
16 biannually or as needed.

17 Q On May 21st, 2018, did you examine an inmate named
18 Brandon Lemagne?

19 A Yes.

20 Q What was the purpose of that examination?

21 A It was called a 14-day evaluation, which we primarily
22 do when inmates transfer in from a new facility. And the
23 primary reason for those particular visits is that the
24 inmate may have chronic conditions. So we kind of do an
25 overview of those chronic conditions to see what's

LaShawn Ruffin - Direct

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1 particularly going on with the inmate medically.

2 Q Did you observe any injuries in Mr. Lemagne's body?

3 A During that particular physical, I did observe a
4 bruise on his body.

5 Q And where was the bruise that you observed?

6 A I would actually have to see my clinical notation
7 because I don't recall at the moment.

8 Q That would refresh your recollection?

9 A Yes.

10 THE COURT: Do you have it marked?

11 MS. GILBERT: I do not, Your Honor.

12 MS. TAYLOR: Twenty-six.

13 MR. GARNETT: It would be 26, Your Honor.

14 THE COURT: All right. We'll mark it
15 Government's Exhibit Number 26.

16 Mr. Gavin, do you have any objection to her
17 showing that exhibit to the witness?

18 MR. GAVIN: I don't, other than I can't find it.

19 THE COURT: Do you want to just show it to him
20 real quick?

21 MS. GILBERT: Certainly, Your Honor. And for
22 what it's worth, we don't intend to move for its
23 admission. It will just be used to refresh the witness,
24 but --

25 THE COURT: Right. But he still has a right to

LaShawn Ruffin - Direct

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1 see what it is, see if he wants to object to it.

2 BY MS. GILBERT:

3 Q Once you've had an opportunity to review and your
4 memory is refreshed, Officer Spivey can bring that back to
5 me.

6 A Okay. So according to my clinical notation here, it
7 states that during the physical exam, I did observe a
8 bruise below the right eye and a bruise to the right upper
9 arm.

10 Q In your experience as a nurse practitioner, how long
11 can it take for bruises to form on the body after contact?

12 MR. GAVIN: Judge, I think that would require an
13 expert opinion.

14 THE COURT: Yeah. Do you want to qualify her?

15 MS. GILBERT: Your Honor, we did not notice
16 Nurse Ruffin because we were planning to just ask her
17 about her experience as a nurse practitioner.

18 THE COURT: All right. Well, her testimony,
19 then, is going to be she saw a bruise on Mr. Lemagne's
20 right eye and right upper arm on May the 21st.

21 MS. GILBERT: Okay. Thank you, Your Honor.

22 THE COURT: Do you have any other questions?

23 MS. GILBERT: No further questions for this
24 witness.

25 THE COURT: Do you have any cross?

LaShawn Ruffin - Direct

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1 MR. GAVIN: No, sir.

2 THE COURT: Okay. Ma'am, thank you so much for
3 being here and testifying. I'm going to ask you -- you're
4 going to be excused. I'm going to ask you not to talk
5 about your testimony until our trial is over. All right?
6 Thank you again.

7 THE WITNESS: Okay. Thank you.

8 (Witness stood aside.)

9 THE COURT: All right. Do you want to call your
10 next witness?

11 MR. GARNETT: Your Honor, the United States
12 would call Officer Harry Parker.

13 Your Honor, Officer Parker appears to be in the
14 restroom.

15 THE COURT: I'll tell you -- here's what we're
16 going to do. We're going to take an extra five-minute
17 break just for the jury while we track him down in the
18 bathroom. I need to address a legal issues with the
19 lawyers anyhow. So I'm going to give you an extra five
20 minutes here. How does that sound?

21 So everybody is going to rise for the jury.

22 (The jury exited the courtroom.)

23 (Mr. Parker entered the courtroom.)

24 THE COURT: We'll just have him step outside for
25 a second.

LaShawn Ruffin - Direct

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1 (Mr. Parker exited the courtroom.)

2 THE COURT: So after Mr. Parker, where are you
3 heading to next? This is the lock specialist. Where are
4 you headed to next?

5 MR. GARNETT: That's right, Your Honor. So,
6 Your Honor, after Officer Parker, we have two additional
7 officers, an EMT -- I'm sorry -- a paramedic and then
8 tomorrow, Your Honor, Dr. Wolf Walker.

9 THE COURT: All right. I'll tell you, the
10 reason I wanted to just talk for a second is about
11 Dr. Wolf Walker. But we could do that when the jury is
12 done, then, right? You're not going to get to her today?

13 MR. GARNETT: No, Your Honor. I don't expect
14 to.

15 THE COURT: So -- I'll tell you what. She's not
16 sitting outside, is she?

17 MR. GARNETT: No, sir.

18 THE COURT: Okay. So if we get through
19 everybody else, we're going to stop no matter what time it
20 is. Okay? And then I'm going -- Ms. Gilbert, I think
21 this is your witness.

22 MS. GILBERT: Yes, Your Honor.

23 THE COURT: I'm going to ask you for a specific
24 proffer about exactly what that witness is going to say
25 just because I don't want to get any more issues like what

Harry Parker - Direct

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1 just happened, and I'm -- I don't want you overplaying
2 your hand and causing a problem here at the end of the
3 trial is what I'm telling you. Okay?

4 So I'll tell you what. I'll give you -- since I
5 gave them five minutes, I'll give you each, I guess, five
6 minutes. We'll come back out at 4:10, and then we'll
7 finish up the rest of your witnesses. And whenever you're
8 done today, we're going to stop, then. Okay?

9 MR. GARNETT: Yes, sir.

10 THE COURT: Other than for Dr. Walker.

11 (Recess from 4:06 p.m. until 4:11 p.m.)

12 THE COURT: We'll all rise for the jury, and
13 we'll bring the jury in.

14 (The jury entered the courtroom.)

15 THE COURT: All right. Everybody can be seated.

16 Everybody okay over there? We're running ahead
17 of schedule. You should be glad about that. All right.

18 Do you want to call your witness?

19 MR. GARNETT: Your Honor, the United States
20 would call Officer Harry Parker.

21 **HARRY PARKER,**

22 called by the government, first being duly sworn,

23 testified as follows:

24 **DIRECT EXAMINATION**

25 BY MR. GARNETT:

Harry Parker - Direct

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1 Q Good afternoon, Officer. Could you please introduce
2 yourself to the jury and spell your first and last name
3 for the court reporter?

4 A My name is Officer Parker, Harry Parker. H-A-R-R-Y,
5 P-A-R-K-E-R.

6 Q And how are you employed, Officer?

7 A I'm a lock security specialist at FCC Petersburg.

8 Q And how long have you been with FCC Petersburg?

9 A This year it will be 15 years.

10 Q So that's a different type -- what's a lock security
11 specialist do at FCI Petersburg?

12 A I repair all the locks in the institution.

13 Q Do you also man the arsenal?

14 A Yes. I man the arsenal as well.

15 Q I should say, what's the arsenal?

16 A Basically what I do is I prepare all the weapons:
17 9 millimeters, M16s, shotguns. Also, I issue out the
18 emergency equipment, like medical trips and stuff like
19 that.

20 Q Are officers at FCC Petersburg required to be armed
21 when they take inmates off the grounds of the -- or the
22 complex?

23 A Yes. It all depends what custody they're in. Like
24 cabinet inmates, you don't have to, but medium and low,
25 yes.

Harry Parker - Direct

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1 Q Do inmates(sic) come to you to draw the weapons for
2 those trips?

3 A I'm sorry.

4 Q Do inmates(sic) come to you, to the arsenal, the
5 armory, to draw the weapons for their trip?

6 A The officers, yes, they do come to the armory to draw
7 their weapons for medical trips.

8 Q So prior to being the lock and security specialist,
9 Mr. Parker, what were your previous duties at FCC
10 Petersburg?

11 A I was a correctional officer. I was a tool room
12 officer, and then I was -- now I'm a lock security
13 specialist.

14 You're talking about prior to me coming to
15 Petersburg or just my duties there?

16 Q While at Petersburg. So -- let me narrow it down a
17 bit. While at FCC Petersburg, have you worked as a
18 housing unit officer?

19 A Yes, I have.

20 Q How long would you say you were a housing unit
21 officer?

22 A Probably about five years.

23 Q Okay. And the location of the lock, the location
24 where you were, where is that located on the complex?

25 A I'm outside. I'm over at the low institution. My

Harry Parker - Direct

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1 location at the armory where I work at is outside the
2 institution.

3 Q So you're not located somewhere where officers from
4 the medium institution could just walk up to your office?

5 A No. Where I issue weapons, I'm stationed at the low.
6 You have the low, and you also have the medium. I'm over
7 at the low -- between the low and the camp.

8 Q So how often would you say you interact with officers
9 from the medium institution?

10 A It all depends. It could be every day. It all
11 depends if they come get a weapon to take an inmate out
12 for a medical trip, or something like that, or if they
13 happen to be working in the housing unit where I'm
14 actually preparing or fixing a lock.

15 Q When officers -- actually -- all right. So let's
16 talk about June 6th of 2018, Officer Parker. Do you
17 recall interacting with Officer Chikosi Legins on that
18 date?

19 A Yes.

20 Q And were you familiar with Officer Legins prior to
21 that date?

22 A Yes.

23 Q Okay. How long had you worked with him for?

24 A I was there -- I was actually there to give him his
25 IF class when he came in. At the time, I was thinking I

Harry Parker - Direct

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1 was tool control class at the time. So I met him when he
2 first came in. I can't remember what year it was.

3 Q Sure. And just to break down the acronyms, what's an
4 IF class?

5 A Institution familiarization. When officers first
6 come inside the institution, we give them courses on
7 telling them what needs to be done, what classes or what
8 key control is, what tool control is, stuff like that.

9 Q Okay. Do you see Chikosi Legins here in the
10 courtroom today?

11 A Yes.

12 Q Could you please identify him by where he's seated
13 and what he's wearing?

14 A He has a blue suit on, blue tie, white shirt. It's
15 the gentleman right there.

16 MR. GARNETT: Your Honor, I'd ask the record
17 reflect that Officer Parker has identified the defendant.

18 THE COURT: So noted.

19 MR. GARNETT: Thank you.

20 BY MR. GARNETT:

21 Q Without going into -- I should say did you have a
22 conversation with the defendant that day, June 6th?

23 A Yes.

24 Q Without going into detail on that conversation, at
25 least not yet, did you end up reporting that conversation

Harry Parker - Direct

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1 to law enforcement?

2 A I reported it to the SIA lieutenant, Norman, yes.

3 Q And what is that, the SIA lieutenant?

4 A He's like a special investigator of the institution.

5 Q Okay. Why did you feel you needed to report that
6 conversation to SIA Norman?

7 A I was uncomfortable about it when I heard it.

8 Q So let's talk about the conversation you had with the
9 defendant on that date. Did you notice when the
10 defendant -- I should say why did the defendant come to
11 your location that date?

12 A He was going on a medical trip.

13 Q And so why would he need to come see you?

14 A Because I issue him the weapons for him to go out on
15 the trip.

16 Q Did you notice anything about the defendant, Officer
17 Parker, when he approached?

18 A Yeah. He -- he's just -- he wasn't himself. He
19 didn't look -- he looked, like, in a state of confusion.

20 Q Noticing that, did you ask him whether anything was
21 going on or how he was doing?

22 A Yes.

23 Q Okay. Why would you typically ask another officer
24 that in the course of your duties?

25 A Because I issue weapons out to officers that can be

Harry Parker - Direct

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1 used for us or actually to hurt us or something like that.

2 So I really want to know their best state of mind people

3 are in when I actually give them a weapon. Also, I'm

4 typically concerned about how they're doing as well.

5 MR. GARNETT: Can the jury hear Mr. Parker

6 pretty well? You can? Okay. Thank you.

7 THE COURT: I think you should ask me that, and

8 I'll ask them.

9 MR. GARNETT: I'm sorry, Your Honor.

10 THE COURT: Okay.

11 MR. GARNETT: I apologize.

12 THE COURT: Go ahead.

13 BY MR. GARNETT:

14 Q All right. What did the defendant tell you when you
15 asked him how he was doing?

16 A He had told me that have I heard any rumors going on
17 around about the institution and stuff about him and
18 stuff. I told him I don't really worry about what's going
19 on out there. I just focus on my job and my family and
20 stuff. And --

21 Q Did he say what kind of rumors he was talking about?

22 A Yeah. He said he was being under investigation for
23 alleged sexual assault.

24 Q Did he say anything else about the sexual assault or
25 the rumors about the sexual assault?

Harry Parker - Direct

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1 A Yeah. That the OIG and FBI came in and subpoenaed
2 his DNA.

3 Q All right. Did you say anything when the defendant
4 told you that they had taken his DNA?

5 A Yeah. I told him that's a good thing, I said,
6 because DNA could prove your innocence.

7 Q And what did the defendant say in response to that?

8 A He said -- well, then he started going on and telling
9 me that -- you know, that he had went into a room to
10 masturbate and that's the only way the inmate could get
11 his DNA and stuff.

12 He said -- he had told me that he had came in
13 and that him and his wife was supposed to have sex that
14 day, he had erectile dysfunction, and he had took Viagra
15 that day. And he came in, and it was -- before it started
16 acting up, he went into the back in the unit team and
17 masturbated.

18 Q Did he say anything about observing any inmates in
19 that unit team area right after that?

20 A Yeah. He said that's the only way that the inmate
21 can probably possibly get his DNA, because he seen that in
22 the -- that particular inmate that he was being accused of
23 and another inmate in that bathroom prior -- after that
24 incident had happened. I don't know.

25 Q Okay. So as a correctional officer at FCI Petersburg

Harry Parker - Direct

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1 for almost 15 years now, were there aspects of this story
2 that struck you as hard to believe?

3 MR. GAVIN: Objection to the conclusion.

4 MR. GARNETT: Your Honor, Officer Parker can
5 testify as to what's normal behavior for a federal
6 correctional officer. I think that's highly relevant.

7 THE COURT: Well, how can he do that?

8 MR. GARNETT: What's that, Your Honor?

9 THE COURT: Is he an expert in that?

10 MR. GARNETT: Your Honor, he's been a
11 correctional officer. He can testify to his experiences
12 and what's normal as a correctional officer at FCI
13 Petersburg.

14 THE COURT: Was it an unusual story?

15 THE WITNESS: Yes, sir.

16 THE COURT: All right. That's it. Let's move
17 on.

18 MR. GARNETT: Your Honor, there are -- I'm
19 sorry. There are aspects of what --

20 THE COURT: Listen, I said -- I'm going to say
21 the same thing to you that I said to her. We're not
22 debating this. Move on.

23 BY MR. GARNETT:

24 Q Officer Parker, are you familiar with the unit team
25 area?

Harry Parker - Direct

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1 A Yes, sir.

2 Q Okay. Are you familiar with the unit team area in
3 the Fox South housing unit?

4 A Yes. They're all the same.

5 Q Okay. And is that an area that is off limits to
6 inmates?

7 A Yes, unless you're orderly.

8 Q Would an inmate be back in the unit team area without
9 an officer escort?

10 A No.

11 Q Okay. Would an officer -- would you see two inmates
12 typically back in the unit team area without an escort?

13 A No.

14 Q Are inmates allowed to access the restroom in the
15 unit team area?

16 A No.

17 Q Would you, as a correctional officer -- as a housing
18 unit officer, if you observed inmates accessing that unit
19 team area without a visible escorting officer, would you
20 have taken some kind of action?

21 A There's no way an inmate would be able to get back
22 there because the doors are locked on both sides. In
23 order to get back there, they have to be unlocked for them
24 to get back there.

25 Q So if you did observe inmates in the unit team area

Harry Parker - Cross

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1 restroom, what would you do as a correctional officer?

2 A I would definitely call for assistance because you
3 had no business being back there. You have files --
4 inmates files and stuff back in that area.

5 Q Had you and the defendant ever discussed matters such
6 as masturbation before?

7 A No.

8 Q Had you ever discussed matters that you would call
9 deeply personal before?

10 A No.

11 MR. GARNETT: That's all the questions I have,
12 Your Honor.

13 THE COURT: All right. Mr. Gavin.

14 **CROSS-EXAMINATION**

15 BY MR. GAVIN:

16 Q Good afternoon, Officer. You indicated that it is
17 possible for an orderly to be back in that unit office if
18 he's under supervision of a guard; is that correct?

19 A If he's under the supervision of the unit team, yes.

20 Q So if an orderly went back into that room under the
21 supervision of a guard, what would they be doing? Would
22 they be cleaning the bathroom? What does an orderly do?

23 A Whatever the unit team assigned him to do as far as
24 cleaning, dumping trash, something like that probably.

25 Q Shredding paper?

Harry Parker - Redirect

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1 A No.

2 Q So not shredding paper, but taking out trash,
3 cleaning the bathroom?

4 A Mainly cleaning the bathroom, because, you know, the
5 papers are confidential. So they have their own
6 shredders.

7 MR. GAVIN: No other questions.

8 THE COURT: Any redirect?

9 MR. GARNETT: Just very briefly, Your Honor.

10 **REDIRECT EXAMINATION**

11 BY MR. GARNETT:

12 Q Officer, you mentioned that an inmate orderly
13 assigned to that job might be present in the unit team
14 area restroom to clean it; is that right?

15 A If they have an orderly assigned to it. That's the
16 only reason why I could think of.

17 Q So the job of cleaning bathrooms in the unit team
18 area, would that be an assigned job that an inmate would
19 have?

20 A It would be if they were back there, yes.

21 MR. GARNETT: Thank you, Your Honor.

22 THE COURT: All right. Mr. Parker, thank you so
23 much for your testimony. You can step down. I'm going to
24 instruct you not to talk about your testimony with anybody
25 until the trial is over. Okay?

Timothy Coleman - Direct

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1 THE WITNESS: Yes, sir.

2 THE COURT: All right. Thank you.

3 THE WITNESS: Thank you.

4 (Witness stood aside.)

5 THE COURT: All right. Do you want to call your
6 next witness?

7 MR. GARNETT: Your Honor, the United States
8 would call Officer Coleman. Officer Timothy Coleman,
9 Your Honor. I apologize.

10 THE COURT: That's fine.

11 **TIMOTHY COLEMAN,**
12 called by the government, first being duly sworn,
13 testified as follows:

14 THE COURT: All right. Mr. Garnett.

15 MR. GARNETT: Thank you, Your Honor.

16 **DIRECT EXAMINATION**

17 BY MR. GARNETT:

18 Q Good afternoon, Officer. Could you please introduce
19 yourself to the jury, and spell your first and last name
20 for the court reporter?

21 A Timothy Coleman. T-I-M-O-T-H-Y, C-O-L-E-M-A-N.

22 Q And how are you currently employed, Mr. Coleman?

23 A By the Federal Bureau of Prisons as a correctional
24 officer.

25 Q And how long have you been -- I should say where are

Timothy Coleman - Direct

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1 you currently located?

2 A FCC Petersburg.

3 Q How long have you been located at FCC Petersburg?

4 A A little over seven years now.

5 Q So that's less than you've been with the BOP. Have
6 you been at a previous institution?

7 A Yes.

8 Q Which location was that?

9 A FCI McDowell in West Virginia.

10 Q And what's your official title? I apologize if you
11 already said that.

12 A Senior officer specialist.

13 Q All right. What were your duties at FCI Petersburg
14 in May of 2018, Officer?

15 A Housing unit D-North, unit officer.

16 Q And --

17 MR. GARNETT: Actually, Your Honor, if I could
18 ask to utilize Government Exhibit 7 briefly just to show
19 where D-North is.

20 THE COURT: Sure.

21 MR. GARNETT: Thank you.

22 Your Honor, I think they might want to rotate it
23 just slightly, Your Honor. It's catercorner more
24 towards --

25 THE COURT: Okay. Folks, can you see it or not?

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1 No.

2 A JUROR: The chair.

3 THE COURT: The chair is in the way?

4 Can you move the -- Mr. Gavin or Mr. Spivey.

5 How's that? Are you okay now?

6 A JUROR: Thank you.

7 THE COURT: All right. Thank you.

8 MR. GARNETT: Thank you, Your Honor.

9 THE COURT: Okay.

10 BY MR. GARNETT:

11 Q Officer Coleman, can you indicate where D-North is
12 located on the complex there?

13 A Do you want me to stand up and --

14 Q Yes, please. If you can just point to it.

15 THE COURT: Just speak loudly, and when you
16 point, if you could tell us what -- the nearest number
17 that you're pointing to, that would be helpful.

18 A Number 33, in this building.

19 BY MR. GARNETT:

20 Q And is it the right side of number 33 as I'm looking
21 at it?

22 A It's -- yes, this side, the right side.

23 Q And is D-North, is that a first-story or second-story
24 unit?

25 A That's a second-story unit.

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1 Q Okay. Thank you. You can have a seat.

2 Typically, Officer Coleman, how many inmates are
3 present in a housing unit?

4 A Anywhere between about 115 and 130.

5 Q So as the D-North housing unit officer in May of
6 2018, what were your responsibilities?

7 A Make sure there were no fights or anything like that,
8 the inmates got to where they needed to go, when they
9 needed to be there, they had everything that they needed
10 to have, what they were supposed to have, and ensure the
11 orderly running of the housing unit.

12 Q How do inmate movements -- you mentioned inmate
13 movements. How often are inmates usually permitted to
14 move around the complex?

15 A It's normally at the top of every hour. And they are
16 allowed to move for ten minutes, just to go to, like, the
17 recreation department or commissary, food service,
18 depending on what's open at the time.

19 Q So during -- is there a particular term you use for
20 that, those movement times?

21 A Activities move.

22 Q Activities move. So during these activity moves, is
23 it fair to say there's a large number of prisoners moving
24 all at once?

25 A Yes.

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1 Q Are inmates who have particular jobs, such as a
2 recreational orderly, would they be allowed to move around
3 a little more freely?

4 A Yes.

5 Q During your tenure at FCI Petersburg, Officer
6 Coleman, did you ever work with an officer named Chikosi
7 Legins?

8 A Yes, I did.

9 Q Do you see him here in the courtroom today?

10 A Yes, I do.

11 Q Can you please indicate where he's seated by an
12 article of clothing and where he's seated?

13 A Right there in the blue suit jacket.

14 MR. GARNETT: Your Honor --

15 THE COURT: The record will reflect he
16 identified the defendant.

17 MR. GARNETT: Thank you, Your Honor.

18 BY MR. GARNETT:

19 Q Do you remember receiving a phone call from the
20 defendant on the evening of May 10th, 2018?

21 A Yes, I do.

22 Q And where were you at that point?

23 A I was in the office in the housing unit D-North.

24 Q Do you know an individual named Brandon Lemagne,
25 Officer?

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1 A Inmate Lemagne, sir.

2 Q Was Inmate Brandon Lemagne assigned to your housing
3 unit, D-North, at the time?

4 A Yes, he was.

5 Q And where was the defendant working at this time?

6 A In Foxtrot South unit.

7 Q And is Foxtrot South adjacent to Delta North, or
8 D-North?

9 A It's building 34, where the 34 is actually written.
10 That's where that would be.

11 Q So that's on the left-hand side of that sort of
12 two-pronged housing unit as you're looking at it?

13 A Correct.

14 Q Do you remember what time you received a call from
15 the defendant?

16 A It was approximately 20 minutes after 7.

17 Q And what did the defendant ask you at that time?

18 THE COURT: This is in the evening, right? In
19 the evening?

20 THE WITNESS: Yes, sir.

21 THE COURT: Okay.

22 MR. GARNETT: Thank you, Your Honor.

23 BY MR. GARNETT:

24 Q And what did the defendant say to you at that time?

25 A He asked me if Inmate Lemagne was still in his

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1 housing unit or if he was back in mine.

2 Q He asked if Inmate Lemagne was still in his own
3 housing unit?

4 A Correct.

5 Q What did you respond to Officer Legins?

6 A That he was passing out flyers at the time and that
7 he was not in my housing unit.

8 Q Okay. Had you ever received a call from Officer
9 Legins about an inmate's location before?

10 A No, I have not.

11 Q Okay. Would it be unusual for a correctional officer
12 to try to find an inmate not assigned to his housing unit?

13 A Yes.

14 Q To try to be locating, I should say.

15 A Yes, it would.

16 Q Okay. As a correctional officer, was it concerning
17 to you that Officer Legins did not appear to know who was
18 in his unit at the time?

19 A At the time, I didn't think much about it, but
20 afterwards, I was wondering why he was wondering if
21 somebody was still in his unit or not.

22 Q Did you observe Brandon Lemagne return to your unit
23 later that evening, Officer?

24 A Yes, I did.

25 Q And do you remember approximately what time that was?

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1 A That was during the 8:00 activities move. So
2 probably about 8:05 p.m.

3 Q And where were you standing at this time?

4 A Outside of the entrance to the Delta North unit on
5 the first landing as you go down the stairs to -- on the
6 outside stairs.

7 Q Were there a fair number of inmates going past you
8 into your housing unit?

9 A Probably between 15 and 20 during that move.

10 Q Did you get the chance to observe Brandon Lemagne
11 closely at that time?

12 A No.

13 Q Shortly after this, Officer Coleman, were you
14 approached by Brandon Lemagne and his cellmate?

15 A Yes, I was.

16 Q Who was his cellmate at this time?

17 A Ronzell Jackson.

18 Q Did either of them speak to you?

19 A Yes. Inmate Jackson.

20 Q Okay. Without going into what Inmate Jackson said,
21 what did you do as a result of that conversation?

22 A I called the operations lieutenant to see if it was
23 okay to send Inmate Lemagne to talk to him about whatever
24 he had to talk about.

25 Q And did you then send Brandon Lemagne to the

Timothy Coleman - Direct

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1 lieutenant's office?

2 A Yes, I did.

3 Q Now, did you see those two -- the two inmates who
4 approached you that evening, Jackson and Lemagne, did you
5 see those two on a regular basis as the housing unit
6 officer?

7 A Every day I worked.

8 Q So did you have a chance to observe their typical
9 demeanor day in and day out?

10 A Yes.

11 Q How would you describe Ronzell Jackson's typical
12 demeanor?

13 A Very friendly, happy, outgoing.

14 MR. GAVIN: Objection to the relevance. This
15 is --

16 THE COURT: Overruled.

17 BY MR. GARNETT:

18 Q And -- I'm sorry. Can you go ahead and finish your
19 answer there?

20 A That was all.

21 Q Okay. Thank you. How would you describe Ronzell
22 Jackson's demeanor at the time that he approached you?

23 A Very reserved, seemed a little bit worried, and just
24 not himself.

25 Q Did you have the chance to observe Brandon Lemagne on

Timothy Coleman - Direct

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1 a regular basis?

2 A Yes.

3 Q Okay. How would you describe Brandon Lemagne's

4 day-to-day demeanor in your using unit?

5 A Also friendly and happy.

6 Q And when Brandon Lemagne -- you said he didn't talk

7 to you, but as you observed him, did you notice anything

8 different about him that evening?

9 A He had like a very blank look on his face.

10 Q Did you happen to see Brandon Lemagne again later

11 that evening, Officer Coleman?

12 A Yes, I did.

13 Q And do you recall what the circumstances of that were

14 and approximately what time this was?

15 A It was approximately -- probably during the 8:30

16 recall, and he was walking what appeared to be from the

17 lieutenant's office towards the medical department.

18 Q And at this point -- so how far away is that from

19 you?

20 A Oh, I'd say probably about 80 yards or so.

21 Q Can you go ahead and indicate on that map there,

22 Officer Coleman, approximately where you saw Brandon

23 Lemagne and the other correctional officer walking?

24 A It would have been approximately through here.

25 MR. GARNETT: Your Honor, let the record note

Timothy Coleman - Direct

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1 that Officer Coleman touched the sidewalk area above
2 unit 23, or building number 23.

3 THE COURT: So noted.

4 MR. GARNETT: Thank you, Your Honor.

5 BY MR. GARNETT:

6 Q Thank you, Officer. You can sit down.

7 Approximately how far would you say it is from
8 Delta North, from D-North, to that sidewalk area where you
9 observed Brandon Lemagne?

10 A I would say approximately 80 yards.

11 Q Okay. Were you confident that the individual you
12 observed was, in fact, Brandon Lemagne?

13 A Yes.

14 Q Is that a well-lit area?

15 A Yes.

16 Q Now, as you watched Brandon Lemagne appear to walk,
17 you said, towards the medical office, did you hear
18 anything?

19 A I heard some shouting.

20 Q And what did you hear? What did the shouting voice
21 say?

22 A "What are you doing? Where are you going?"

23 Q Were you able to observe who was shouting?

24 A No, I was not.

25 Q Okay. Was there an officer nearby you who was able

Timothy Coleman - Direct

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1 to observe who was shouting?

2 A Yes.

3 Q And where was that person located?

4 A He was downstairs in the area in between Delta -- or
5 C and D units.

6 Q And did you observe that officer move to observe --
7 or move to a position where they could observe shouting?

8 A Yes. He walked down to the edge of the walkway where
9 he could look and see where the shouting was coming from.

10 Q Did you later discuss that incident with that
11 officer?

12 A Yes.

13 Q Okay. And after speaking to that officer, did you
14 become confident that you had recognized the voice?

15 A Yes.

16 Q And what voice did you believe that to be?

17 A Officer Legins.

18 THE COURT: I'm going to sustain the objection.

19 MR. GAVIN: Objection.

20 THE COURT: You're going in the back door what
21 you can't do in the front door. That's sustained.

22 MR. GARNETT: Yes, Your Honor.

23 BY MR. GARNETT:

24 Q So, Officer Coleman, as you observed Brandon Lemagne
25 walking, was he doing anything that was concerning to you

Timothy Coleman - Direct

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1 from a security standpoint?

2 A Not at all.

3 Q Okay. In your experience as a senior officer
4 specialist, is it unusual for officers to shout across the
5 compound at other people?

6 A Yes, it is.

7 Q Let's talk about your relationship with the defendant
8 here briefly, Officer Coleman. How would you describe
9 your relationship with the defendant when you were
10 officers?

11 A Acquaintances.

12 Q Okay. As a senior officer specialist, are you
13 familiar with the areas of FCI Petersburg that are
14 generally off limits to inmates?

15 A Yes, sir.

16 Q Okay. Are you familiar with the layout of F-South?

17 A Yes.

18 Q Is it laid out essentially identically to the D unit?

19 A Yes.

20 Q Are you familiar with the location, then, of the unit
21 team office in that building?

22 A Yes.

23 Q And are unit team offices generally off limits to
24 inmates?

25 A Yes.

Timothy Coleman - Direct

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1 Q Okay. Would an inmate be able to get back there
2 without an escort by a guard?

3 A No, sir.

4 Q Okay. When might an inmate be allowed back there
5 with a guard during working hours?

6 A If there's unit team staff back there and they call
7 for the inmate, the case manager, counselor or secretary.

8 Q What if they were an orderly assigned to clean a
9 restroom?

10 A They would have to be escorted also by unit team
11 staff.

12 Q And if you're an inmate and you're assigned the job
13 as a restroom orderly, would that be your official job in
14 the institution?

15 A Yes.

16 Q If you observed inmates -- as a housing unit officer,
17 if you observed inmates unescorted using a bathroom in the
18 unit team office, would that be something that would
19 concern you?

20 A Definitely.

21 Q Would that be something that a correctional officer
22 should investigate?

23 A Definitely.

24 Q Are you familiar with the areas of the housing units
25 that are not covered by surveillance cameras?

Timothy Coleman - Cross

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1 A Yes.

2 Q And why would officers be familiar with the areas
3 that are not covered by surveillance cameras?

4 A Just to know that we would not want to be in those
5 areas in case something happened. We'd want the backup
6 from the camera.

7 Q So is it a safety issue?

8 A Correct.

9 Q Are there cameras in the unit team area?

10 A No, sir.

11 Q In your experience, have you taken inmates by
12 themselves into the unit team area after hours when no
13 staff are present?

14 A No, sir.

15 Q As a senior officer specialist, would you be
16 concerned if you heard about an officer who did this?

17 A Yes.

18 Q Would it be more concerning to you if, at the same
19 time, that correctional officer was the only housing unit
20 officer responsible for a bay full of inmates?

21 A Yes.

22 MR. GARNETT: No further questions, Your Honor.
23 Thank you.

24 THE COURT: All right. Mr. Gavin.

25 **CROSS-EXAMINATION**

Timothy Coleman - Cross

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1 BY MR. GAVIN:

2 Q Good afternoon, Officer.

3 A Hello.

4 Q If there was ever a situation where you were
5 escorting an inmate from one side to the other through the
6 corridor -- let's back up.

7 Do you do that occasionally, from one side of
8 the corridor to the other, just straight through?

9 A Not unless they're going over there for a specific
10 purpose.

11 Q Like posting flyers or something like that?

12 A Correct.

13 Q All right. So as I understand your testimony, that
14 if you were walking through that corridor and you needed a
15 paper clip from the office and the inmate was in your
16 sight, in your view, you couldn't even open the door to go
17 to the secretary's office to pick up a paper clip?

18 A Could you rephrase that? I don't understand.

19 Q If you were going from one corridor side to the other
20 corridor side and you had the inmate with you walking
21 through the corridor, are you saying that there's never
22 been a circumstance or situation, to your knowledge, where
23 the guard that's escorting that person through the
24 corridor could open the secretary's office, get a paper
25 clip if he needed it, close the office door and continue

Timothy Coleman - Cross

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1 on his way?

2 A That would be possible, but unwise.

3 Q If you could look at this.

4 MR. GAVIN: May I approach the witness?

5 THE COURT: Sure.

6 BY MR. GAVIN:

7 Q You're in Delta, correct?

8 A Correct.

9 Q So you're in 33 on this side?

10 A Yes, sir.

11 Q So this is the front of the building?

12 A Correct.

13 Q All right. So the voice --

14 THE COURT: Hold on one second. Hold on one
15 second, Mr. Gavin.

16 Can the court reporter hear him?

17 THE COURT REPORTER: Yes.

18 BY MR. GARNETT:

19 Q So this building 34 is Fox?

20 A Yes.

21 Q All right. So you believe Mr. Legins' unit was here,
22 Fox South?

23 A Yes.

24 Q All right. So you were on this walkway.

25 A In the stairwell above that walkway.

Timothy Coleman - Cross

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1 Q So whatever you would have heard would have been all
2 the way around, like --

3 A Correct.

4 Q -- out of your vision?

5 A Yes.

6 MR. GAVIN: Can you pull up 5-B, Ms. Taylor?

7 BY MR. GAVIN:

8 Q Can you look at your monitor? Do you see Delta North
9 in that picture, Officer?

10 A Yes, I do.

11 Q Can you put your finger on the screen and circle it,
12 where you were?

13 So is it fair to say, Officer, from where you
14 were there, you can't even see around to the other side of
15 Fox South?

16 A That is correct.

17 Q Do you remember testifying before the grand jury?

18 A Yes, I do.

19 Q Do you remember being placed under oath there?

20 A Yes, I do.

21 Q And do you remember being asked a question in the
22 grand jury about whether you heard what was said?

23 A During the shouting?

24 Q Yes, sir.

25 A Yes.

Timothy Coleman - Cross

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1 THE COURT: Confront him with the question and
2 then the answer.

3 BY MR. GAVIN:

4 Q And is it -- did you say what you said today, "Where
5 are you going"?

6 A I believe so.

7 Q Did it sound anything like, "You've got to be kidding
8 me"?

9 THE COURT: Listen, I want you to read the
10 question and read the answer from the grand jury
11 transcript.

12 MR. GAVIN: It's not consistent because it's
13 consistent with what he said at the --

14 THE COURT: I'm not asking you whether it's
15 consistent. The jury decides that. I'm asking you to
16 read the question and read the answers explicitly that
17 you're confronting him with.

18 MR. GAVIN: Yes, sir.

19 BY MR. GAVIN:

20 "QUESTION: So you heard a voice, and do you
21 remember exactly what the voice said?

22 "ANSWER: It was, 'Where are you going? What
23 are you doing?'"

24 Was that your testimony?

25 A Today, yes.

Timothy Coleman - Cross

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1 Q All right. But that's --

2 THE COURT: Is that what he said back in the
3 grand jury?

4 MR. GAVIN: Pardon?

5 MR. GARNETT: Is that -- did you read what it
6 said back in the grand jury?

7 MR. GAVIN: Yes, sir.

8 THE COURT: Well, that's consistent with what he
9 just said.

10 MR. GAVIN: I understand. That's why I was
11 saying -- the follow-up question to that was, "Did it
12 sound anything like, 'Don't believe anything he has to
13 say?'"

14 THE COURT: I don't understand what you're doing
15 here. You can't impeach him. He said the same thing he
16 said before.

17 MR. GAVIN: I understand. I'll withdraw the
18 question. I understand. No other questions.

19 THE COURT: Do you have any redirect?

20 MR. GARNETT: No, Your Honor.

21 THE COURT: Okay. Officer, thank you for your
22 testimony. You can step down. I'm going to instruct you,
23 you're not to talk about your testimony with anybody until
24 the trial is over. Okay?

25 THE WITNESS: Yes, sir.

Duane Farmer - Direct

THE COURT: All right.

(Witness stood aside.)

THE COURT: Mr. Garnett, do you have another witness?

MR. GARNETT: Your Honor, the United States would call Officer Duane Farmer.

THE COURT: Everybody okay over there? Okay. We might just go a couple minutes past 5 because I'm on a mission right now. Okay?

CSO SPIVEY: Are you going to need that exhibit again?

MR. GARNETT: We might, Officer Spivey. I'm not sure. Thank you.

THE COURT: I'm sorry. What happened?

DUANE FARMER,

called by the government, first being duly sworn,
testified as follows:

THE COURT: All right. Ms. Gilbert.

MS. GILBERT: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. GILBERT:

Q Good afternoon, Officer.

A Good afternoon.

Q Could you please state and spell your name for the Court?

Duane Farmer - Direct

1 A Duane Farmer. D-U-A-N-E, F-A-R-M-E-R.

2 Q Where do you work, Officer Farmer?

3 A FCC Petersburg, Bureau of Prisons.

4 Q What's your job there?

5 A Correctional officer.

6 Q How long have you worked at FCC Petersburg?

7 A January 25th will be my five years. So just five
8 years.

9 Q Where at FCC Petersburg do you ordinarily work?

10 A Based on my seniority, I'm only working inside of the
11 units.

12 Q Is that the housing units?

13 A Housing units.

14 Q What are your duties as an officer working in a
15 housing unit?

16 A Supervise inmates, ensure their safety,
17 accountability.

18 Q Is one of your duties also looking out for
19 contraband?

20 A Yes.

21 Q Are cigarettes contraband?

22 A Yes.

23 Q What can inmates do with cigarettes, in your
24 experience as a correctional officer?

25 A Basically, you have about maybe 20 -- I believe 20

Duane Farmer - Direct

1 cigarettes in a pack of cigarettes. And the going rate
2 for a cigarette is in between 20 and \$25. So you times
3 that by 20 cigarettes. So now you got roughly \$400 for --

4 Q I'd like to turn your attention back to the evening
5 of May 10, 2018. Where were you working that night?

6 A North side unit, Foxtrot North --

7 Q Do you recall --

8 A -- housing unit.

9 Q I'm sorry to interrupt you. Do you recall who was
10 working that night on F-South?

11 A F-South? Officer Legins.

12 Q Do you know Officer Legins?

13 A Yes.

14 Q How do you know him?

15 A From work.

16 Q Did you ever talk with Defendant Legins at work?

17 A Yes.

18 Q What kinds of things would you guys talk about?

19 A Talked about work, talked about family, talked about
20 sports.

21 Q I'm sorry. I interrupted you again. Please finish
22 your answer.

23 A The job.

24 Q Did you ever talk with the defendant about gay or
25 transgender inmates?

Duane Farmer - Direct

1 A Yes.

2 Q What did the defendant say about gay and transgender
3 inmates?

4 A I guess we both talked about it, you know, trying to
5 get an understanding. You know, I mean working in the
6 Bureau of Prisons, you know, the environment for me was
7 kind of new, and we have a large influx of gay inmates.

8 So just really, I guess, learning, discussing,
9 talking about inmates, their behavior, to try to get a
10 pulse of how -- how to better supervise them.

11 Q Did you ever notice the defendant spending a lot of
12 time with any particular group of inmates?

13 A Yes.

14 Q What group of inmates was that?

15 A It would be the gay -- inmates that I would call gay.

16 Q So far as you know, was the defendant a smoker?

17 A Yes.

18 Q Did you ever see the defendant smoke at work?

19 A Yes.

20 Q Where are officers allowed to smoke at FCC
21 Petersburg?

22 A They have designated smoking areas.

23 Q And when you saw the defendant smoking, was he always
24 smoking in the designated smoking areas?

25 A No.

Duane Farmer - Direct

1 Q Where else did you see him smoking?

2 A The stairwell outside of the units.

3 Q So talking about the night of May 10th, 2018, did you
4 see the defendant that night?

5 A Yes.

6 Q When was the first time you saw the defendant that
7 night?

8 A I believe the first time I saw him that night -- I
9 might have saw him earlier in the day, but I do remember
10 seeing him enter into my unit, calling my name.

11 Q And what did he say when he was calling your name?

12 A He was telling me that he had an inmate that was
13 posting some material in the inmate bulletin board area
14 and that he escorted him to my side.

15 Q What was that inmate's name, if you know?

16 A Inmate Lemagne.

17 Q Did you know Mr. Lemagne?

18 A Yes.

19 Q How did you know Mr. Lemagne?

20 A I also worked his unit from time to time, and I got
21 to know him through talking to him.

22 Q Why did you talk to Mr. Lemagne?

23 A I knew that he was one of the -- one of the gay
24 inmates, but he was also an inmate that was, you know,
25 easy to talk to, always polite to the officers. So he was

Duane Farmer - Direct

1 one of the inmates that I selected that I can perhaps
2 better understand that type of population so I can -- it
3 would aid me in how I would supervise.

4 Q You said earlier that the defendant shouted out to
5 you and was with Mr. Lemagne. Do you know what
6 Mr. Lemagne was doing that evening?

7 A That particular evening -- I knew he worked in
8 recreation, but I was told that -- by Officer Legins that
9 he was -- he escorted the inmate to my side of the unit to
10 post something in the bulletin board.

11 Q Do you know where they came from when they came into
12 your unit?

13 A From the south side housing unit.

14 Q How do you get from the south side housing unit to
15 the north side housing unit?

16 A If you think in terms of a house that has a
17 Jack-and-Jill bedroom and you have a bathroom between each
18 bedroom, well, it's a corridor in the unit from the south
19 side to the north side. It's approximately maybe 20 feet
20 apart in the hallway, going from north side to the south
21 side, and he entered from the south side unit into my
22 unit, which is the north side.

23 Q Is that part of the facility sometimes referred to as
24 the unit team area hallway?

25 A Yes.

Duane Farmer - Direct

1 MS. GILBERT: Ms. Taylor, I'd like to please
2 play what's been previously admitted. This is the F-North
3 common area video from May, which I think is 2-A. If you
4 could please hit play and then stop right away.

5 (Video Played.)

6 MS. GILBERT: Oh, I'm sorry. It's -- it's the
7 F-North. So I think it is maybe 2-B.

8 (Video Played.)

9 MS. GILBERT: Yes. Thank you.

10 BY MS. GILBERT:

11 Q Officer Farmer, do you recognize that video?

12 A Yeah. That's the unit I was working that night.

13 Q That's the F-North housing unit?

14 A Yes.

15 Q Do you recognize anyone in this video?

16 A Me.

17 Q And where are you, Officer Farmer?

18 A Right here.

19 Q Can you actually circle on the screen? If you put
20 your finger on it, it will make a little mark.

21 A That's me.

22 MS. GILBERT: And let the record reflect that
23 the video is paused at 18:15:15, and Officer Farmer has
24 circled the individual to the far left side of the screen
25 when you're facing it.

Duane Farmer - Direct

1 A I mean, you --

2 BY MS. GILBERT:

3 Q I'm sorry?

4 A You can't really see the -- part of the video, but
5 I'm standing right next to the entrance and exit door of
6 my unit.

7 Q Okay.

8 MS. GILBERT: And, Ms. Taylor, if you could
9 please play the video until 18:15:24.

10 (Video Played.)

11 BY MS. GILBERT:

12 Q Officer Farmer, do you recognize anyone else in this
13 video at this point? We are paused at 18:15:24.

14 A Okay. Down here, that area right here, we have
15 Officer Legins and then Inmate Lemagne.

16 Q And what did Officer Legins do in the portion of the
17 video that we just watched, if you can just tell?

18 A I remember him calling my name right there. He
19 escorted -- well, he came through the unit team area,
20 entered my unit, which is the north side, with Inmate
21 Lemagne. And he called out to me, telling me that he
22 escorted him through the corridor area to post some
23 material on the bulletin board.

24 MS. GILBERT: Ms. Taylor, if you could please
25 play a few more seconds until 18:15:31.

Duane Farmer - Direct
(Video Played.)

1
2 BY MS. GILBERT:

3 Q I cleared that a little bit late, but, Officer
4 Farmer, could you see where Officer Legins went after he
5 signaled to you?

6 A Right here. He went back through that door that will
7 direct him back to the south side.

8 Q Is that into the unit team area?

9 A Yes.

10 Q Officer Farmer, what reason would an officer have, in
11 your experience, for taking an inmate into the unit team
12 office area at that time of night after the unit team has
13 gone home?

14 A Okay. It looks like it's like 6:00, 6:15. Unit
15 team, they're gone. They're not working. So you really
16 don't have any reason to go through that particular
17 hallway.

18 But, you know, this particular inmate, Lemagne,
19 he worked as a recreation orderly. So recreations orderly
20 do, from time to time, have to post material inside of the
21 units. There is a stairwell on the outside that they can
22 enter in, but officers do, at times, walk inmates through
23 to go from one side of the unit to the other. It's a
24 little bit quicker. But we should escort the inmate out
25 of the entrance door and let them hit the stairwell and go

Duane Farmer - Direct
1 to the adjacent side.

2 Q Okay. And what about the office area that's attached
3 to that unit team area hallway? In your experience, what
4 reason would an officer have for taking an inmate into the
5 unit team secretary's office that's off of that hallway?

6 A Okay. At 6:00 in the evening, there's no reason to
7 do that.

8 Q I'd like to play for you what's been previously
9 admitted as Government Exhibit 2-C.

10 MS. GILBERT: Ms. Taylor, if you could please
11 play the video until 18:16:22.

12 (Video Played.)

13 MS. GILBERT: Thank you.

14 BY MR. GARNETT:

15 Q So that was from 18:16:01 to 18:16:22. Officer
16 Farmer, what does this video clip show?

17 A That shows me monitoring my door, talking to an
18 inmate, and witnessing Inmate Lemagne exit my unit.

19 Q Did you notice anything about Mr. Lemagne as he
20 walked past you?

21 A If you can back the video up a little bit to where
22 he's right in front of me, prior to him exiting the
23 door -- a little bit more -- you'll notice that you'll
24 look and see I look up at the Inmate Lemagne, and I
25 glanced at his face.

Duane Farmer - Direct

1 Q Okay. So we're at 18:16:07 .

2 (Video Played.)

3 MS. GILBERT: If you could pause there,

4 Ms. Taylor. And we're paused at 18:16:21.

5 BY MS. GILBERT:

6 Q So, Officer Farmer, you said that during that video

7 we just watched, you looked at Mr. Lemagne's face?

8 A Yes.

9 Q What, if anything, did you notice about Mr. Lemagne's
10 face?

11 A It were just blank, like -- I talk to him. He's
12 always -- you know, he always speak to me, just real
13 pleasant, but that -- just that particular day, he was
14 just stoic and kept walking.

15 Q Okay. So the defendant walked Mr. Lemagne into your
16 unit. Mr. Lemagne walked out the exit door here. And we
17 saw in the earlier clip the defendant walked back into the
18 unit team area. Did the defendant come back into your
19 unit later that night?

20 A Yes.

21 Q When was the next time you saw the defendant later
22 that night? What happened?

23 A Maybe 45 minutes later, Officer Legins came in my
24 unit. I was in my office. And he asked me about the --
25 if I knew whether or not that the unit team area was

Duane Farmer - Direct

1 blocked off. I remember, you know, working earlier that
2 day, and it wasn't blocked off. So we both walked back
3 there, and it was all taped off with, like, police barrier
4 tape.

5 Q And what else, if anything, did he say to you?

6 A Well, you know, he said -- he told me that -- that he
7 escorted Inmate Lemagne to my side of the unit to post
8 some material in the bulletin board so I hope they don't
9 be tripping, I didn't do nothing but escort the inmate to
10 post some material on your bulletin board.

11 Q At that point, what was the defendant's demeanor like
12 when he said, "I hope they don't be tripping"?

13 A I would say just overly nervous. And the reason why
14 I'm saying that --

15 Q Oh, I'm sorry.

16 A -- is because if you escort an inmate from one unit
17 to another unit, it's not that serious, especially if you
18 have an inmate that's an orderly. You know what I mean?
19 It's not that serious.

20 Q Did you see the defendant again that night?

21 A Yes.

22 Q What happened when you saw him a second time?

23 A We basically had further discussions about, you know,
24 trying to figure out -- have some understanding as to why
25 is this area taped off, what's going on. And it was like,

Duane Farmer - Direct

1 I had no clue, he appeared to have no clue. So we just
2 had short conversations about that.

3 Q And did he say anything else?

4 A At that particular time, no, I don't think so.

5 Q What was the defendant's demeanor like that time he
6 came over to your unit?

7 A Just pretty much the same, you know, just -- to me,
8 just a bit overly concerned about -- curiosity. I mean,
9 if you come to work -- my shift starts on the north side.
10 I started at 1400, 1430. South side starts at 1600, you
11 know. So it was just coming to work -- coming to work, it
12 wasn't taped off. Now it's about 17 -- I mean 1900 hours,
13 and it's taped off. I mean, we had discussions trying to
14 figure it out.

15 Q Before we move on and talk about your conversations
16 with the defendant after that night, I have a few more
17 questions for you about that night, May 10th, 2018. Did
18 the defendant ever ask for cop-outs on that night?

19 A No.

20 Q Did you give him any cop-outs that night?

21 A No.

22 Q And just briefly, what are cop-outs?

23 A Say you have an inmate and he's looking for a job.
24 He want to get a job working in the dining hall or he want
25 to change jobs. So it's basically like an inmate request

Duane Farmer - Direct

1 form. They submit it through the unit team.

2 Q When did you next talk with Officer Legins after that
3 night?

4 A I believe the -- the next night he wasn't working the
5 south side unit. And the following night, he was working
6 the south side unit, and we talked again.

7 Q What did the defendant say on that occasion?

8 A We talked a little bit more about that, and he -- he
9 wanted me to write some kind of statement saying that
10 he -- that I knew that he just walked the inmate to my
11 side and that was it.

12 Q Did you know that the defendant just walked the
13 inmate to your side and that was it?

14 A What I know is that he came into my unit from his
15 side. That's what I know. The amount of time that he was
16 back there, I don't know.

17 Q Because you didn't see him enter the other side?

18 A Exactly.

19 Q But the defendant asked you to write a statement
20 saying that the defendant just walked the inmate through
21 to your unit and that was it?

22 A Yes.

23 Q Did the defendant ask you anything else that night?

24 A I don't think so, if I --

25 Q Did he ask --

Duane Farmer - Direct

1 A I don't think so. He may have.

2 Q Did he ask you whether you had taken inmates into the
3 unit team office before?

4 A Something to that effect. And I was like -- I was
5 like -- now I was getting, like, kind of concerned about
6 why is -- where is this going with this, you know. Like,
7 write a statement saying I was -- I just escorted an
8 inmate in or you know you bring people back here.

9 I was just getting uncomfortable with that
10 whole -- that whole set-up.

11 Q Officer Farmer, can I ask you to explain further what
12 the defendant said about taking inmates into the unit team
13 office?

14 A You know -- can you, like, give me that question
15 again?

16 Q Sure. So we were talking about the conversation that
17 you had with the defendant approximately two days after
18 May 10th, 2018. And I'm asking you what, if anything, the
19 defendant said about whether you, Officer Farmer, had
20 taken inmates alone into the unit team secretary's office
21 before.

22 A I don't think we -- I don't think that we had that
23 kind of -- that specific conversation. It was maybe more
24 so about that's something that we do. But I never talked
25 to him. I don't believe I ever talked to him and said

Duane Farmer - Direct

1 that I do that, no.

2 Q So just so I can clarify. The defendant said to you
3 that's something we -- correctional officers -- do is take
4 inmates into the unit secretary's office alone after
5 hours?

6 MR. GAVIN: Objection. Leading.

7 THE COURT: Why don't you explain to us --

8 THE WITNESS: Okay.

9 THE COURT: -- what it is -- the discussion
10 between you and the defendant was about this topic.

11 THE WITNESS: I'm talking about having a
12 discussion about whether or not we can bring him from one
13 side to the other side.

14 THE COURT: Right. Did you talk about that with
15 the defendant?

16 THE WITNESS: Yes, about going from one side to
17 the other side. Not about that we bring them into the
18 secretary's office or unit team member's office. Just
19 from going from one side -- the north side to the south
20 side or vice versa.

21 BY MS. GILBERT:

22 Q What did the defendant say about that?

23 A That's the conversation I remember. I don't remember
24 him -- if I can have, like, my statement that I wrote to
25 refresh my memory. Because I remember having a

Duane Farmer - Direct

1 conversation with Legins about that we walk inmates from
2 one side of the hallway to the other side of the hallway.

3 As far as us walking inmates into the unit team
4 area or to the secretary's area and we both agreed on
5 that, no.

6 BY MS. GILBERT:

7 Q Okay. And you also said that you and the defendant
8 continued, at that point, talking about the taped off
9 office area --

10 A Yes.

11 Q -- and the evidence collection?

12 A Yes.

13 Q You also said that the defendant asked you to write a
14 statement; is that correct?

15 A Yes.

16 Q Who did the defendant want you to write a statement
17 to?

18 A I took it as me writing a statement to support what
19 happened, and me, you know -- I have no knowledge even who
20 to give that statement to, if I wrote it. So I didn't
21 think that deep in it because I wasn't going to do it.

22 Q So the defendant didn't tell you -- did the defendant
23 tell you who he wanted you to write the statement to?

24 A No.

25 Q What did he say he wanted you to write in the

Duane Farmer - Direct

1 statement?

2 A That he knew -- that I knew that he just walked the
3 inmate through that corridor and he was only in there for
4 a minute.

5 Q And you said that you did not write that statement?

6 A Correct.

7 Q Why did you not write that statement?

8 A Because I don't -- I didn't have knowledge of how
9 long he was in there.

10 Q Did the defendant -- did you talk to the defendant
11 again after this conversation?

12 A I know we talked at least three or four times, yes.
13 And it was basically just going over the same thing, but I
14 also -- one particular day I received a phone call from
15 Officer Legins. I was at work. He was not working the
16 south side, and I believe the call came from outside the
17 institution.

18 Q So the defendant called you at work. What did he say
19 when he called you?

20 A The conversation started in reference to as an
21 officer, we had to pack up inmate property, and, you know,
22 secure it, tag it and turn it in. Say if an inmate get in
23 trouble. So it can be moved to a special housing unit.
24 So he called me in reference to some inmate property.

25 Q In your training and experience, is it typical for an

Duane Farmer - Direct

1 officer to call from outside the facility to ask you about
2 inmate property when you're working?

3 A I just thought it was kind of awkward or not normal.
4 I mean, when you get off work, working in the prison,
5 you're not thinking about no inmate property. I'm not.

6 Q During that conversation, did the defendant also ask
7 you about the investigation into what was going on in that
8 unit team area?

9 A This is my opinion. I think it was kind of like a
10 lead-in to probably -- you know, because the conversation
11 switched to, you know, what's going on at work in
12 reference to, you know, because you got a lot of FBI. You
13 know, you got a lot of talking going on about the area
14 being blocked off, and he was curious about what was going
15 on at work.

16 Q After that telephone conversation, did you hear at
17 all from the defendant again on any medium?

18 A I guess you have to -- like the social media,
19 Facebook. I received, like, a text message-type message
20 in the Facebook. I don't really do Facebook. But, you
21 know, in the message it was basically, you know, hey, how
22 you doing, you know, and he talked a little bit about life
23 and, you know, having second chances and, you know, value,
24 you know, where you are and who you are because, you know,
25 you don't get -- you know, second chances type thing are

Duane Farmer - Direct

1 hard to come by. Something to that effect.

2 But I never responded to the message. At this
3 point I was just trying to get my distance.

4 Q Officer Farmer, do you remember testifying before the
5 grand jury?

6 A Yes, ma'am.

7 Q And if I showed you your grand jury transcript, would
8 that help you remember what you said to the grand jury
9 about your conversation to the defendant?

10 A Yes, sir.

11 MS. GILBERT: May I ask Officer Spivey to bring
12 this up?

13 THE COURT: Do you want to mark it?

14 MS. GILBERT: Sure. We'll mark this for
15 identification as Government Exhibit 27.

16 Would you like to take a look, Mr. Gavin?

17 MR. GAVIN: No.

18 BY MS. GILBERT:

19 Q I'll just give you a second to read that, Officer
20 Farmer.

21 A Which page?

22 Q It's down towards the bottom half of the page.

23 MR. GAVIN: I'm sorry, Ms. Gilbert. What page?

24 MS. GILBERT: I don't know. I'm sorry.

25 MR. GAVIN: Did you say 27?

Duane Farmer - Direct

1 MS. GILBERT: I marked it as 27.

2 BY MS. GILBERT:

3 Q And I'm sorry, Officer Farmer. What page are you
4 looking at there?

5 A Thirty-seven.

6 Yeah. Okay.

7 Q Did that help you remember what you said before the
8 grand jury?

9 A Yeah. Because it was like -- I guess -- I guess, you
10 know, I got kind of ticked off because in the
11 conversation, it was like he was trying to get me to admit
12 that I also go inside the unit team area with inmates.
13 You know what I mean? Like I mean not in the unit --
14 yeah, in the unit team area where, like, you have a
15 bathroom in there. You've got a secretary's office. You
16 got, like, a break room area back there.

17 And he was trying to get me to say that I, too,
18 also do that. And you can -- you can -- you can escort an
19 inmate from the north side to the south side. I have done
20 that, but not take them inside of that other area.

21 THE COURT: "That other area" being the
22 secretary's area? Is that what you're --

23 THE WITNESS: Yes, sir.

24 BY MS. GILBERT:

25 Q Officer Farmer, so -- you said that you've never

Duane Farmer - Direct

1 taken an inmate alone into the unit secretary's office
2 after the unit team has left for the day; is that correct?

3 A If you -- you can -- if you take an inmate inside of
4 the unit team area where the secretary is -- this is the
5 way I do it. If it's prior to 4:00, right -- so let's say
6 it's 12:00. You got staff back there. It will be the
7 secretary, possibly unit team, right. But the inmate
8 lives in your housing unit, but that inmate might be the
9 orderly that cleans up that area back there.

10 So I -- I have took them back there when unit
11 team was in there to take them and say, "Unit team, are
12 you ready for your orderly cleanup?"

13 And they'll say yeah. They'll assume
14 responsibility, right.

15 And then I leave. Now they got the inmate.

16 But if they're -- at 1800 hours, they're not
17 there. So you don't need to take an inmate inside of that
18 area.

19 Q So that night, Officer Farmer, did you go into the
20 unit secretary's office with an inmate --

21 A No.

22 Q -- to shred paper?

23 A No.

24 Q Last set of questions for you, Officer Farmer. How
25 would an inmate get into the unit team hallway without an

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1 officer?

2 A It's no way you can get into that area unless the
3 door is unlocked or the inmate have a key. Now, we are
4 trained to have that area -- going into that area, or any
5 door, you lock it behind you. If you have a key that fit
6 that lock, you lock it behind you.

7 Q How would an inmate get into the bathroom inside the
8 unit secretary's office --

9 A You can't --

10 Q -- inside the hallway without an officer?

11 A You can't even get to the bathroom because the
12 bath- -- you have an outer door that has a lock. All
13 right. So you can't even get to the bathroom door because
14 you've got to get through that first door with the lock.
15 You can't even get to the bathroom.

16 Q And I'm sorry to ask you this question, Officer
17 Farmer, but would you ever leave your post to go into that
18 bathroom to masturbate while you're supposed to be
19 working?

20 MR. GAVIN: Objection to the relevance.

21 THE COURT: I'm going to sustain that.

22 MS. GILBERT: No further questions for this
23 witness.

24 THE COURT: You don't have to answer that.

25 Folks, everybody okay? We're going to finish up

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1 the cross-examination before we go home today. Okay?

2 Go ahead, Mr. Gavin.

3 MR. GAVIN: Thank you.

4 **CROSS-EXAMINATION**

5 BY MR. GAVIN:

6 Q Officer Farmer -- good afternoon. Officer Farmer, so
7 I understand that it's not ideal for you to take an inmate
8 from one side to the other side through that corridor, but
9 I think I understand to say that it happens occasionally;
10 is that correct?

11 A From the south side to the north side?

12 Q Correct.

13 A Yes.

14 Q Now, would that be -- just going from the south side
15 to the north side -- a basis to write up a corrections
16 officer for misconduct?

17 A Can you repeat that?

18 Q Sure. If you were to have taken an inmate from Fox
19 South through the corridor to your side on Fox North and
20 go straight through, would that be a basis to write up an
21 inmate(sic) for misconduct for any type of employment
22 violation?

23 A Based on my experience, all right -- we have a policy
24 that we follow. So I'm going to paint a picture. Okay?

25 From the north side to the south side in any

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1 unit, in the housing unit at the medium prison, the inmate
2 can get from the north side to the south side -- an inmate
3 that work an orderly, they know that they can use the
4 stairwell to go from one side to the other side. It's
5 convenient for an officer to escort an inmate from the
6 north side to the south side. It might be -- it might be
7 two minutes before a move take place. "A move" meaning
8 that you have to unlock your front door and allow inmates
9 to go out for a ten-minute move. But you might have an
10 orderly need to post something like that particular night.
11 It's convenient to do that.

12 Now, have I done that? Yes. Is that in
13 violation to where I would get fired? I don't think that
14 is in violation of me being fired, but it's not the way I
15 was trained.

16 Q All right. So let's take it a step further. If you
17 were to escort an inmate from one side -- Fox South, for
18 example -- to your side, Fox North, but you stopped at the
19 unit team office to get a paper clip, to get a notepad
20 while the inmate was there with you, would that be
21 something that you think that might create a violation, if
22 it was after hours and the unit team area wasn't there?

23 A I can't really think -- I can't really -- I never
24 thought that deep on that because I never been in that
25 situation.

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1 Q Is there a policy out there that you're aware of that
2 would make that essentially prohibited conduct on behalf
3 of an officer?

4 A I would answer that by saying that, you know, I'm a
5 correctional officer. I'm not a lieutenant. I'm not a
6 captain. I'm a correctional officer. And I perform my
7 duties, and I try to stay within the scopes of my duties.
8 I don't think in terms of hypotheticals, would that be
9 this or would that be that.

10 Q I understand. So, Officer Farmer, when Mr. Legins
11 was talking to you afterwards, was it your belief that
12 Mr. Legins, based on his demeanor and his conversation
13 with you, was more concerned about his job?

14 A Which particular time?

15 Q In the conversations that he had with you after this
16 happened on May 10th, when he said, "I don't" -- "I hope
17 they don't be tripping," things like that, was it your
18 impression that he was worried about getting fired from
19 his job?

20 A His concern, based on, you know, my -- me looking at
21 him and reflecting on the conversations that we had, I
22 thought he was overly concerned about doing something like
23 that, you know, escorting an inmate from the south side to
24 the north side, especially being an inmate that is an
25 orderly. That's one of the inmate's primary duties is to

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1 go in the unit, post materials, something like that. It's
2 like a basic function.

3 And to be that overly concerned, that's what I
4 was -- that's what drew my attention. Not whether or
5 not -- I didn't think in terms of him thinking he was
6 going to get fired, but the depth of his concern got my
7 attention.

8 Q All right. Thank you.

9 MR. GAVIN: I don't have anything else,
10 Your Honor.

11 THE COURT: All right. You don't have any
12 redirect, do you?

13 MS. GILBERT: No. Thank you, Your Honor.

14 THE COURT: All right, Officer. Thank you so
15 much for your testimony. You're excused. I'm going to
16 instruct you not to talk about your testimony with anybody
17 until our trial is over. Okay?

18 THE WITNESS: Yes, sir. Just leave that there?

19 THE COURT: Just hold on one second there.

20 Folks, I'm going to give you the rest of the day
21 off. See, I gave that extra five-minute break and now I
22 took it all back from you, right. So I'm going to remind
23 you again that you're not to be influenced by anything on
24 the outside. Don't talk to folks. Don't go on social
25 media. We hate Facebook. You heard him talking about

1 that. We don't want anything like that. Okay? Just
2 remember your instructions. I'll look forward to seeing
3 you tomorrow.

4 This case is going to be yours pretty soon. So
5 you just hang in there with me. Okay? All right.

6 Everybody rise for the jury.

7 (The jury exited the courtroom.)

8 THE COURT: All right. You all can be seated.
9 We're going to talk about a couple things. So --

10 MS. GILBERT: Your Honor, can Officer Farmer --

11 THE COURT: Oh, I'm sorry. Officer Farmer, you
12 can be excused. I'm sorry about that.

13 THE WITNESS: That's fine.

14 (Witness stood aside.)

15 MR. GAVIN: Judge, we actually might need
16 Officer Farmer for one more issue. If he could wait
17 outside for a second.

18 THE COURT: Yeah. Do you want to just step in
19 the hallway, then?

20 (Mr. Farmer exited the courtroom.)

21 THE COURT: Do you want to tell me what that is?

22 MR. GAVIN: Judge, I have actually designated
23 Officer Farmer on my witness list as well. The reason
24 being that on the March 16th incident, he was the officer
25 that was at the door that looked at the folder that

1 Mr. Lemagne opened. So I was going to call him in my case
2 to ask him whether or not he recalled seeing anything, but
3 I don't think there's any evidence that he did.

4 So if the United States could stipulate that
5 that was, in fact, Officer Farmer, then I don't need him
6 as a witness tomorrow.

7 THE COURT: All right. Do you want to stipulate
8 to that?

9 MR. GARNETT: So we would stipulate, Your Honor,
10 that Officer Farmer was the officer that interacted with
11 Brandon Lemagne on March 16th. I don't know that we've
12 ever actually asked him whether he observed anything on
13 the folder. So I'd be reluctant to -- I don't know what
14 his answer would be. Again, there's no evidence I have
15 that he did see anything, but that's not a question I
16 think we ever asked him.

17 THE COURT: So what do you want to put forward,
18 now? So on March the 16th --

19 MR. GAVIN: On March 16th --

20 THE COURT: -- he was the officer that was
21 where?

22 MR. GAVIN: He was at Fox North exit door.

23 THE COURT: And what are you asking -- okay.
24 The next question, then, is what?

25 MR. GAVIN: Mr. Lemagne came through. So

1 Mr. Lemagne is at the exit door where you had control
2 over. Did you see anything with his folder, because he
3 pulled it out and looked at it. And the folder is the
4 folder that's after the elevator incident where Mr. Legins
5 evidently ejaculated all over the folder, among other
6 things.

7 THE COURT: So you want him to stipulate just
8 that he was the officer on the --

9 MR. GAVIN: Just that he was the officer, yep.

10 THE COURT: But nothing beyond that?

11 MR. GAVIN: Well, they don't have any evidence
12 from Mr. Farmer that that was, in fact, you know, anything
13 on the folder, that he observed anything. So, you know,
14 I'd -- I'd just as soon have the negative inference. But,
15 I mean, I can call him for that just to say did you see
16 anything on the folder. He's going to say no, I'm sure.

17 THE COURT: Well, let me see what they say.

18 MR. GARNETT: Your Honor, I think we'd prefer
19 that we just call Officer Farmer. Again, I'm not sure
20 that Officer Farmer can recall what --

21 THE COURT: All right. Do you want to bring --
22 I wish we had just done this all at the same time.

23 Do you want to bring Officer Farmer back in
24 here?

25 MR. GAVIN: I was just trying to save his

1 appearance tomorrow.

2 (Mr. Farmer entered the courtroom.)

3 THE COURT: Officer, it seems that I was a
4 little premature in telling you you're excused. We're
5 going to need you to come back tomorrow morning because I
6 think the defense is going to recall you as a witness for
7 a different point. So I apologize for inconveniencing
8 you, but I'm going to ask that you be here no later than
9 9:30 tomorrow. Okay?

10 MR. FARMER: Yes, sir.

11 THE COURT: All right. But I am going to remind
12 you, please don't talk about your testimony with anybody.
13 Okay? You have a good night.

14 (Mr. Farmer exited the courtroom.)

15 THE COURT: All right. Let's talk about a
16 couple things here. So you have the paramedic, Ramsey,
17 left and then you have Dr. Walker; is that right?

18 MS. GILBERT: I believe that professionally, she
19 also goes by Dr. Wolf, and I apologize for the ambiguity
20 in our notice.

21 THE COURT: Dr. Wolf. All right. That's okay.
22 But that's it, right? That's all you have?

23 MS. GILBERT: Yes, Your Honor.

24 THE COURT: All right. Do you want to give me a
25 proffer about exactly what Dr. Wolf is going to testify

1 to? Because I don't want to have -- I've had enough drama
2 from you guys. I don't want any more drama here.

3 She's a licensed clinical psychologist, works at
4 the BOP. I got that. So take it from there.

5 MS. GILBERT: Correct, Your Honor. And so as
6 Mr. Garnett alluded to in opening, when he was talking
7 about how Dr. Wolf will testify that Mr. Lemagne described
8 to her a course of conduct that, in her training and
9 expertise, as someone who's worked extensively with
10 victims of sexual abuse and also with sexual offenders,
11 that those behaviors are consistent with grooming for
12 sexual abuse. She'll explain how grooming for sexual
13 abuse works and why she wrote a report identifying
14 grooming as an issue in the course of conduct here.

15 She will testify about her examination of
16 Brandon Lemagne that night. She can testify about his
17 demeanor because she knew him from before this incident
18 and how his demeanor compared to her previous observations
19 of him. She can testify about how his demeanor compares
20 in terms of people who have alleged sexual assault. And I
21 understand that I cannot elicit whether it's consistent or
22 whether it's inconsistent, but simply that there's a range
23 of reactions to sexual assault that she's been trained on.

24 THE COURT: You know your nurse Womble said
25 there's nothing consistent. It was actually the opposite

1 of what you said you were going to do here. Do you
2 remember that? Ms. Womble said -- I think you went back
3 to her -- I can't remember if it was you or Mr. Garnett,
4 but asked if there's, you know, consistent thing --
5 consistent pattern of behavior. And she said there's no
6 consistent behavior. It's -- people act in all kind of
7 different ways, which undermines this whole thought.

8 MS. GILBERT: If that wasn't clear, Your Honor,
9 I apologize. I think that is exactly what we're trying to
10 elicit. In other words, it might be conventionally
11 understood that victims of sexual assault would be, for
12 example, weeping, and we were attempting to elicit that
13 actually victims of sexual assault react in all different
14 ways. And so Mr. Lemagne's demeanor, which some witnesses
15 had described as blank or stoic, would be in that sense --

16 THE COURT: I'm not going to allow that. And I
17 think you've achieved what you need to achieve. So I'm
18 precluding you from going into that discussion.

19 MS. GILBERT: The demeanor discussion.

20 THE COURT: The demeanor discussion.

21 I want to talk to you about the grooming thing.
22 Is she an expert in grooming of sexual victims?

23 MS. GILBERT: She has received education and
24 training around that. She's worked in facilities where
25 everybody in the facility is a sexual abuse victim. She's

1 also worked in facilities where everybody is a sexual
2 offender. So it is something she has a lot of experience
3 and expertise with.

4 THE COURT: But is there such an area of
5 expertise -- I've never heard of that, in terms of
6 Daubert. Is there an expertise in the grooming of sexual
7 victims? We should have probably had a Daubert hearing on
8 this.

9 MS. GILBERT: Your Honor, I wasn't aware that
10 defense counsel was objecting at all to our designation of
11 her or to that issue. She did write a report where she
12 talked about the grooming behaviors.

13 THE COURT: But what I'm asking, though, is --
14 look, I've been in this world -- the criminal world for an
15 awfully long time, tried rape cases myself. I'm not
16 familiar with an expertise in grooming. And I'm asking
17 you, is there a scientific expertise in this area?

18 MS. GILBERT: Yes. In the field of psychology,
19 it is a known term. This is a term that she was
20 explicitly trained on and has received education on.

21 THE COURT: All right. Mr. Gavin, do you have
22 anything to say about this? I'm more than a little
23 nervous about this.

24 MR. GAVIN: Yeah. Judge, I agree. Grooming is
25 unique. It's a term of art, essentially. I'm more

1 familiar with it in possession of child pornography cases
2 or, you know, child exploitation cases. Not so much in a
3 case like this, for one. But for two, I do agree that she
4 was an expert because she was not only -- she was an
5 expert both factually because she saw the defendant --

6 THE COURT: Right.

7 MR. GAVIN: -- but she also could testify about
8 perhaps the PTSD and the symptomatology that he showed
9 there. I don't remember that -- frankly, that grooming
10 was part of the designation. I would certainly say that
11 if grooming was a term of art, it probably ought to have
12 been in the designation. And I don't -- when I heard it
13 in opening, I thought that might be an issue.

14 THE COURT: It strikes me -- your case has gone
15 in extremely well. Why do you want to push the envelope
16 on stuff like this? I mean, I think you have -- I just
17 don't see why we need to do that.

18 What you've essentially done, though, is you've
19 laid a factual predicate through Mr. Lemagne's testimony
20 about what was going on. You could make argument that
21 just by the facts presented by the alleged victim, that
22 that's what he was doing without needing to go that extra
23 step for an expertise that I'm not familiar with.

24 We probably should have had a Daubert issue.
25 And it seems to me the safer thing for you to do here is

1 not to move forward with the expert testimony. You can
2 put on the testimony. She had the contact afterwards.
3 She witnessed him, saw his demeanor, although I think
4 you're beating a dead horse. I think everybody knows that
5 his behavior was incredibly unusual, right. And I think
6 that's it. I think we're going to leave it at that.

7 So none of the expertise about grooming, none of
8 the expertise about consistent with it. Just have her
9 testify about the way he acted. And you've had all these
10 corrections officers saying, you know, he was an
11 effervescent guy and all the sudden, boom, everything
12 changes, right. I think you're pushing way too hard for
13 something you don't need. So that's going to be my ruling
14 on that.

15 Okay. So it strikes me that -- your EMT is not
16 going to be that long either, right, your paramedic?

17 MS. GILBERT: No, Your Honor. We don't
18 anticipate that she'll be very long at all, and we are
19 considering whether we actually need to call her at all.

20 THE COURT: I was thinking that, you know. You
21 might want to just start getting to the end of the line
22 here, getting it over with, right?

23 All right. So it strikes me -- they're going to
24 be done by 9:15 -- or 10:15. What are you looking like
25 tomorrow? And I'm going to colloquy the defendant here in

1 a second.

2 MR. GAVIN: I think it's very possible,
3 Your Honor, that I could be done by lunch.

4 THE COURT: All right.

5 MR. GAVIN: We have been in -- I've been in
6 contact with Mr. Trevillian about having our witnesses
7 here by no later than 9:30.

8 THE COURT: So your witnesses are inmate
9 witnesses?

10 MR. GAVIN: Three of them are.

11 THE COURT: Okay. So that's how many witnesses
12 you expect. We're going to address the defendant here in
13 a second.

14 MR. GAVIN: Okay.

15 THE COURT: Is that what you're expecting?

16 MR. GAVIN: Those three and two others. Five
17 total.

18 THE COURT: All right. So let me say to both of
19 you, if we're done by lunch, we're closing tomorrow.
20 Okay? I'm going to limit you each to no more than an
21 hour. Government -- who's doing what? Ms. Gilbert, I
22 know, is doing one of the closings.

23 MS. GILBERT: I'll be closing, Your Honor.

24 THE COURT: But who's doing the rebuttal? Are
25 you doing the rebuttal too?

1 MS. GILBERT: I will be doing rebuttal.

2 THE COURT: All right. So you've got an hour.

3 You'll portion it amongst yourself. That way you're not

4 stealing from Mr. Garnett. So you've got an hour.

5 You've got an hour to work with. Then we'll

6 kind of go from there.

7 MR. GAVIN: Yes, sir.

8 THE COURT: What I might do is -- if you do take

9 the full hour, I'm going to see how long she goes. I

10 might break before each argument -- well, at least between

11 the -- her argument, your argument and then your rebuttal,

12 which will probably be shorter. Then might go straight

13 into the instructions. We'll see how it goes. Because I

14 want to focus on what you're doing here. So -- all right?

15 MR. GAVIN: Yes, sir.

16 THE COURT: All right. Mr. Legins, do you want

17 to rise?

18 So, Mr. Legins, you heard me reference this

19 before. You have a constitutional right to testify if you

20 wanted to. Nobody can tell you not to. Nobody can tell

21 you to do it. It is up to you and you alone. I asked

22 your lawyer to discuss this with you before now, and I'd

23 like to know from you whether or not you would like to

24 exercise your constitutional right to testify tomorrow.

25 THE DEFENDANT: No, Your Honor, I'm not

1 testifying tomorrow.

2 THE COURT: All right. Has anybody threatened
3 you or made any promises or tried to coerce you in any way
4 for you not to exercise your right to testify?

5 THE DEFENDANT: No, Your Honor.

6 THE COURT: And is it your decision and your
7 decision alone not to testify?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: So what I'm going to do is just as a
10 precaution, in case you change your mind overnight, after
11 your case is put in by your lawyer, I'm going to check
12 back one more time and just ask you again tomorrow if
13 you've changed your mind at all, and that's it. Because
14 this is such an important decision. I want to make sure
15 you've made it on your own. Okay?

16 THE DEFENDANT: Thank you, Your Honor.

17 THE COURT: All right. Is there anything else
18 we need to do here?

19 Assuming he's not testifying, we would strike, I
20 guess, from the jury -- you can have a seat, Mr. Legins.
21 Thank you.

22 We would -- oh, there's something else I want to
23 talk about, and that's this. Now, I ruled before about
24 the other inmates testifying. Then I changed my mind.
25 Okay?

1 During the materiality debate that we had with
2 officer -- or with Agent Lavender, I went back and I
3 looked at the count again. It says Count Five,
4 specifically that defendant falsely denied that he engaged
5 in a sexual act with any inmate at any time at FCI
6 Petersburg. Technically speaking, you could call those
7 other two witnesses. I think we ought not to do that, but
8 I'll give you a chance to be heard if you want to argue
9 right now. If you want to step outside and discuss with
10 each other, you can do that. I think it would be a
11 mistake, but I'll give you a chance to be heard.

12 MR. GARNETT: We appreciate that, Your Honor.

13 Your Honor, we will not be calling them absent
14 the defendant's testimony.

15 THE COURT: Okay. It would only be -- okay.
16 Now, here's the other thing. I'm not so sure if he -- if
17 the defendant were to be acquitted on all the sexual
18 conduct, I'm not so sure that that second false statement
19 stands as being material.

20 What we're going to do is this. We're going to
21 let the jury decide this, and if for some reason -- and
22 remember, we did a special verdict form that they would
23 answer on both questions anyhow, right. If by chance -- I
24 don't see this happening, but if he's acquitted on all the
25 sexual conduct and they were to find not proven on the

1 first alleged lie but convicts on the second lie, I would
2 let you all brief whether or not it would sustain
3 appellate review or not. I think it might, but I'll deal
4 with that down the road. Just -- you know, I think that's
5 an unusual -- I think it's all or nothing here. That's
6 kind of what I think is what's going to happen. So -- but
7 I just want you to know that's what we're going to do.
8 Okay?

9 MR. GARNETT: Yes, Your Honor.

10 THE COURT: All right. So let's go to the jury
11 instructions here real quick. Do you have the jury
12 instructions here?

13 MR. ROSENDAHL: They should be in the trial
14 binder.

15 THE COURT: They are in the trial binder?

16 All right. I think we strike number 17, then,
17 the credibility of witnesses. The defendant as a witness.

18 MR. GAVIN: No objection.

19 MR. GARNETT: I'm sorry, Your Honor. Could you
20 repeat that? I missed the first part.

21 THE COURT: Instruction Number 17 entitled
22 "Credibility of witnesses." "The defendant as a witness."
23 He's not testifying. I think we remove that.

24 MR. GARNETT: That's fine.

25 THE COURT: Okay. I have no other changes to

1 the instructions that we dealt with before, but if you all
2 do, now is the time to tell me.

3 MR. GAVIN: None on behalf of the defendant.

4 MR. GARNETT: No changes from the United States,
5 Your Honor.

6 THE COURT: All right. So depending on when
7 you're done, if it's -- if it's -- if it's in the
8 mid-afternoon, if it's like 2:00, 2:30, I'm just going to
9 stop and let you guys start the next day. But if it's
10 before noon, I might give them an extended break until we
11 get everything together, and then we'll be rolling with
12 the closing arguments and then the instructions. Okay?

13 MR. GAVIN: I have one more thing.

14 THE COURT: Sure.

15 MR. GAVIN: My now infamous pictures that I was
16 going to try to introduce --

17 THE COURT: Right.

18 MR. GAVIN: -- the government and I, we still
19 need to reach a stipulation on that. So what -- to avoid
20 the pictures.

21 THE COURT: Right.

22 MR. GAVIN: So how do you want us to do that? I
23 mean, how much detail should we go into for the purpose of
24 the stipulation?

25 THE COURT: I think you should -- the

1 stipulation should say, "The parties agree that the
2 defendant, when fully erect, approximately the measurement
3 of his penis is 7 inches long."

4 I'll tell the jury that a photograph was
5 submitted to me. I saw it, but I'm going to spare them
6 from the picture, and they should accept it as true.

7 MR. GAVIN: Thank you.

8 THE COURT: Although I've got to tell you, I
9 don't know what the relevance is in light of Nurse Womble,
10 who said size has no impact on -- you know that.

11 MR. GAVIN: It may be relevant with my expert.

12 THE COURT: With your expert. All right.

13 Okay. What else do we have to do? Anything
14 else?

15 MR. GARNETT: Nothing else, Your Honor.

16 THE COURT: All right. No shenanigans tomorrow.
17 You're playing too close to the vest. I'm going to remind
18 you, both of you, you represent the United States of
19 America. You work for the Department of Justice. These
20 cute questions at the end are starting to get on my
21 nerves, but more importantly, it's beneath the position
22 that you both hold, which I hold in high regard. All
23 right. See you tomorrow.

24 (The proceeding adjourned at 5:39 p.m.)
25

REPORTER'S CERTIFICATE

I, Tracy J. Stroh, OCR, RPR, Notary Public in and for the Commonwealth of Virginia at large, and whose commission expires September 30, 2023, Notary Registration Number 7108255, do hereby certify that the pages contained herein accurately reflect the stenographic notes taken by me, to the best of my ability, in the above-styled action.

Given under my hand this 20th day of February 2020.

/s/

Tracy J. Stroh, RPR